S. Hrg. 100-409

REFORM AND MODERNIZATION OF THE FARMERS HOME ADMINISTRATION, S. 1179

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1179

A BILL TO AMEND THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT TO IMPROVE THE ADMINISTRATION OF FARMERS HOME ADMINISTRATION LOANS, AND FOR OTHER PURPOSES

JUNE 9, 1987

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REFORM AND MODERNIZATION OF THE FARMERS HOME ADMINISTRATION, S. 1179

TUESDAY, JUNE 9, 1987

U.S. SENATE,
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The committee met, pursuant to notice, at 9 a.m., in room SR-332, Russell Senate Office Building, Hon. Kent Conrad presiding.

Present or submitting a statement: Senators Conrad, Melcher, Harkin, and Daschle.

STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR FROM NORTH DAKOTA

Senator CONRAD [presiding]. The hearing before the Senate Committee on Agriculture, Nutrition, and Foresty will come to order.

This hearing involves the Reform and Modernization of the Farmers Home Administration, S. 1179.

I want to publicly thank Chairman Leahy for calling this important hearing on the future of Farmers Home Administration. The reform and modernization of FmHA is essential to rebuilding family farm agriculture in the Plains States. We also appreciate the witnesses who have agreed to testify on this pressing issue this morning.

The issue before the committee is not just the future of FmHA, but the future of family farming in this country. FmHA is faced with a lingering recession in agriculture—the most difficult challenge FmHA has faced in its 51 year history.

In my home State of North Dakota, income from farm production—including Government supports—has fallen to the lowest level in 7 years.

Since 1980, farmland values have dropped from 35 to 65 percent in the Plains States. The Economic Research Service of USDA predicts another 10-percent decline in 1987.

Rural communities are faced with declining populations, failing businesses, closing schools, and a bleak future. Young people see no future in farming or rural communities and are leaving in droves.

In Senate hearings which we held across the Upper Midwest in February and during town meetings throughout the State of North Dakota, problems with the administration of the FmHA were raised time and time again.

Over half of the case work my office handles and half of the letters concerning agriculture deal with FmHA problems. That is what prompted me to draft this legislation and bring it to the attention of the Senate Agriculture Committee.

Before we begin with our first witnesses, I want to briefly review the 10 sections of this bill so that we know what the elements of this legislation are.

Section 1 requires the Secretary to writedown farm operating and ownership loans to the market value of the collateral when doing so would return at least as much to the Federal Government as liquidation or bankruptcy proceedings.

Sections 2 and 3 provide standards for loan servicing eligibility and loan servicing reform. It requires FmHA to notify the borrower of all loan servicing options. Most of these sections may now be moot due to recent court rulings.

Section 4 provides for reform of the county committees election procedure.

Section 5 provides for a formal appeals procedure similar to that of other Federal agencies.

Section 6 requires FmHA to participate in credit dispute resolutions as required by various State laws and directs the Secretary to follow a specified preference order in selling acquired land.

Section 7 sets out certain standards for the leaseback of land to the former owner or owners.

Section 8 requires the Secretary to release borrower income sufficient to assure a reasonable standard of living for the borrower and the borrower's family and to pay all necessary farm operating expenses.

Section 9 provides direction to the Secretary in providing borrowers the opportunity to buy back the family farm homestead buildings.

Section 10 establishes State Farmers Home Administration policy boards elected by county committees to analyze and oversee the effects of Federal and State FmHA policies and to determine the level of lending needed by farmers of the various States.

That is the broad outline of this legislation, and I am very pleased that Mr. Clark is here. And let us begin with the Administrator, Mr. Clark. Again, thank you for coming, Vance. We appreciate that.

[The prepared statement of Senator Conrad and a section by section summary submitted by Senators Kent Conrad, Thomas A. Daschle, and Tom Harkin on S. 1179, the Farmers Home Administration Reform and Moderization Act of 1987 follows:]

SENATOR KENT CONRAD

HEARING: Farmers Home Administration

Reform and Modernization

9:00 a.m., June 9, 1987

OPENING STATEMENT

I want to publically thank Chairman Patrick Leahy for calling this important hearing on the future of the Farmers Home Administration. The reform and modernization of FmHA is essential to rebuilding family farm agriculture in the Plains States. We also appreciate the witnesses who have agreed to testify on this pressing issue.

The issue before the Committee is not just the future of the Farmers Home Administration, but the future of family farming. FmHA is faced with a lingering recession in agriculture - the most difficult challenge FmHA has faced in its 51 year history.

•In my home state of North Dakota, income from farm production (including government supports) has fallen to the lowest level in seven years.

•Since 1980, farm land values have dropped by 35 to 65% in the Plains States. The Economic Research Service of USDA predicts another 10 percent decline in 1987.

Rural communities are faced with declining populations, failing businesses, closing schools, and a bleak future. Young people see no future in farming or rural communities and are leaving in droves.

In Senate hearings throughout the upper midwest in February and during town meetings throughout the State of North Dakota, problems with the administration of the FmHA were raised time and time again.

Over half of the case work my office handles and half of the letters concerning agriculture deal with Farmers Home Administration problems.

Farm organizations ranging from the Farm Bureau, National Farmers Organization, National Farmers Union, and the Save the Family Farm Coalition support changes in FmHA.

Based on the testimony of farm organizations and the Attorneys General from North Dakota, Minnesota, South Dakota, Iowa, Nebraska, and Illinois, we prepared legislation to provide FmHA with the authority and direction to more efficiently and effectively handle the current farm recession. Subsequently, Senators Daschle, Harkin, and I introduced S. 1179, "The Farmers Home Administration Reform and Modernization Act of 1987." The bill is cosponsored by Senators Fowler and Grassley.

KENT CONRAD. PAGE 3.

A companion bill in the House is sponsored by Congressmen Dorgan, Marlenee, Penny, Jeffords, Stallings, McDade, Glickman, Sikorsky, Sabo, and Kastenmeier.

We know that the agricultural boom of the 1970's has given way to economic ruin in the 1980's. But, I am particularly disappointed that the agency has coped so inadequately with this crisis. While commercial bankers are working to keep viable farmers in business, the agency continues to push farmers into liquidation and bankruptcy, imposing unnecessary human suffering and wasteful budget costs on the Federal government, farmers and rural communities.

While the agency advocates the guaranteed loan program as an innovative new step to modernize FmHA, its application varies from county-to-county, and many banks find it cumbersome and nearly unworkable.

We are faced with very serious problems. To address these problems we need to answer some questions: Where do we want to go from here? Who do we want to own the land? What is the future of rural communities? Do we have to write them off or can we revitalize the economies of rural communties?

Most importantly for this hearing, what role can FmHA play in rural revitalization? Should FmHA merely be a repository of past loans -- trying to serve farmers who bought land at the wrong time? Or, should FmHA be reformed and modernized to face this crisis, to play a positive role, to help young and re-entering farmers to make a new beginning?

Rural America does not have to be turned into factory farms with absentee owners and hired workers. The family-size farm is still the most efficient. The challenge is to develop policies which revitalize family farming.

FmHA is facing a crisis. Agriculture is in a recession. FmHA has had great difficulty in meeting the challenge.

Today we will hear the testimony of FmHA experts; farmers, bankers, those who have fought to help farmers, and the Honorable Vance Clark, Administrator of FmHA.

Before we begin with our first witnesses, let me provide a brief summary of S. 1179, "The Farmers Home Administration Reform and Modernization Act of 1987."

Section 1 requires the Secretary to write down farm operating and ownership loans to the market value of the collateral when doing so would return at least as much to the Federal government as liquidation or bankruptcy proceedings.

Section 2 and **Section 3** provide standards for loan servicing eligibility and loan servicing reform. It requires FmHA to notify the borrower of all loan servicing options. Much of this section may now be moot due to recent court rulings.

Section 4 provides for reform of the county committee election procedure.

Section 5 provides for a formal appeals procedure similar to that of other federal agencies.

Section 6 requires FmHA to participate in credit dispute resolutions as required by various state laws and directs the Secretary to follow a specified preference order in selling acquired land.

Section 7 sets out certain standards for the leaseback of land to the former owner or owners.

Section 8 requires the Secretary to release borrower income sufficient "to assure a reasonable standard of living for the borrower and the borrower's family" and "to pay all necessary farm operating expenses."

Section 9 provides direction to the Secretary in providing borrowers the opportunity to buy back the family farm "homestead" buildings.

Section 10 establishes "State Farmers Home Administration Policy Boards" elected by county committees to analyze and oversee the effects of Federal and State FmHA policies and to determine the level of lending needed by farmers of the various States.

This bill was developed to address serious and growing problems in the administration of the Farmers Home Administration and to provide a stronger role for the agency in a rural economic revitalization.

SENATORS KENT CONRAD, TOM DASCHLE, AND TOM HARKIN

S. 1179 THE FARMERS HOME ADMINISTRATION REFORM AND MODERNIZATION ACT OF 1987

Section by Section Summary

SECTION 1. FARMERS HOME ADMINISTRATION DEBT SETTLEMENT.

Section 1 requires the Secretary to write down farm operating and farm ownership loans to the market value of the collateral when doing so would return at least as much to the Federal government as liquidation or bankruptcy proceedings.

It also provides for a speedier method by which the FmHA can service bank loan guarantees in default and will therefore encourage greater use of guarantees and provide FmHA greater flexibility.

These provisions will help keep viable farmers on the land at no cost to the Federal government. It forces FmHA to do what most commercial farm banks have been doing for some time; i.e., cutting their losses and keeping those farmers who can survive and pay back their loans on the farm.

The Small Business Administration has extensive and valuable experience with guaranteed bank loans. This proposal gives FmHA similar authority and should encourage more extensive use of the FmHA guarantee loan program, thus providing desperately needed credit to the agricultural sector.

SECTION 2. LOAN SERVICING ELIGIBILITY & SECTION 3. LOAN SERVICING REFORM.

These sections provide standards for loan servicing eligibility and reform. It requires FmHA to notify the borrower of all loan servicing options and to provide means by which the borrower may apply for each alternative.

These provisions are necessary to make borrowers aware of their rights and obligations under current law. The failure of FmHA to do so in the past has resulted in a class action suit which could reverse thousands of FmHA foreclosure actions taken over the past several years.

SECTION 4. COUNTY COMMITTEES.

This section reforms the election procedures for FmHA County Committees by requiring a 45 day period for the submission of nominations and at least a 30 day period after nominations are submitted before elections can be held.

Because of current procedures, very few eligible voters are even aware of elections which determine county committee members.

SECTION 5. APPEALS PROCEDURE.

This section requires that appeals of FmHA administrative decisions be held before hearing officers appointed by the Secretary and that such hearings be conducted in accordance with Administrative Law.

In most federal agencies, independent appeals officers rule against the agency in 20 to 40 percent of the cases. In contrast, only 2 to 5 percent of FmHA appeals are successful. It is a basic premise of American democracy to give citizens a fair hearing of their complaints. To do so requires independent appeals officers.

SECTION 6. COMPLIANCE WITH STATE LAW AND PRIORITIES FOR DISPOSAL OF ACQUIRED PROPERTY.

This section requires FmHA to participate in programs of credit resolution required under State law prior to the initiation of any collection activity.

Credit mediation services have been extremely successful in Iowa and Minnesota and have reduced the rate of Chapter 12 bankruptcy filings substantially over states without effective credit mediation.

Section 6 also sets up a priority status among potential purchasers of acquired FmHA property. The former owner is given first right of refusal followed by a preference for his immediate family.

For members of recognized Indian tribes, other members of the tribe are given next preference followed by the Tribal government or corporation.

SECTION 7. FARM LEASEBACK PROGRAM.

In addition, the former owner has first right of refusal to rent the acquired property.

Under Section 7, FmHA is given authority to sign rental contracts or sales contracts for the land and homestead with the owner before FmHA actually acquires the property. These contracts become part of the legal documents through which delinquent borrowers convey the land back to FmHA.

SECTION 8. INCOME RELEASE.

This section requires FmHA to issue regulations setting national standards for release of living expenses and farm operating expenses to farmers who are involved in liquidation or foreclosure proceedings.

Current practices allow vast differences between states and even within states. Because of the lack of a national standard, FmHA can literally starve out a family if they so desire.

SECTION 9. HOMESTEAD PROTECTION.

This section allows farmers to retain the "homestead" -- the home and surrounding farm buildings through purchase or rent.

SECTION 10. STATE POLICY BOARDS.

This section establishes State FmHA Policy Boards to review and report to the Secretary and the Public on the effects of Federal FmHA policies and determine the amounts of direct and guaranteed farm ownership and operating loans needed for the farmers of the State.

These elected state policy boards will provide an alternative view of state needs and of the effects of FmHA policies in the various States.

STATEMENT OF HON. VANCE L. CLARK, ADMINISTRATOR, FARMERS HOME ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE

Mr. CLARK. Good morning, thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to be with you today to discuss the activities of the Farmers Home Administration and our continuing efforts to help those farmers unable to obtain credit on regular commercial terms.

Your invitation, Mr. Chairman, asked that I address the issue of reform and modernization of the Farmers Home Administration. I assume that you are referring to the provisions of S. 1179, which you sponsored, Mr. Chairman. We appreciate your interest and regret that we respectfully disagree and must register our opposition to S. 1179.

We strongly oppose S. 1179, because it would impair our ability to service a farm loan portfolio totaling $28.3 billion, and ignores the servicing tools already available to us and in widespread use throughout the Agency.

Those tools are helping us deal with delinquent farm loans totaling $7.6 billion. Our progress may be slow at times, but we are making progress, significantly so, in terms of helping those farmers in need and in reducing the overall delinquency. S. 1179 would stop this progress and would provide, in effect, a $7.6 billion giveaway of public funds.

We do not need to do that, nor does the American taxpayer expect us to. On the contrary, we need to continue providing the special assistance as needed, farmer by farmer, depending on individual circumstances.

For example, in the 1986 fiscal year, we extended some form of special service in almost 100,000 instances to our 275,000 farm borrowers. This consisted of 43,000 loans rescheduled or reamortized; 2,500 loans deferred; 25,000 loans subordinated to other lenders to allow new and additional credit to be extended; and 28,000 loans refinanced at the lower, more favorable, limited resource interest rate, at an average interest rate, I might add, of 4.5 percent for operating loans and 5 percent for farm ownership loans.

Two new features, adopted during the lending season last year, provided additional assistance. The Food Security Act of 1985 interest buy-down option enabled us to guarantee more than 1,500 additional farm loans, about 10 percent of our total guaranteed operating loans. Our own Agency launched "Operation Assist," and made it possible for more than 500 farmers to obtain loans totaling almost $43 million. Under Operation Assist, you will recall, county supervisors, if their allocated direct operating loan funds are exhausted, personally escort eligible farmers to the local bank or other lender to assist in obtaining a guaranteed loan.

I am happy to report that, so far this year, we have reached almost 53,000 farmers with those extra special efforts: almost 22,000 loans rescheduled or reamortized; 800 loans deferred; almost 15,000 subordinations; and more than 15,000 refinanced at the limited resource interest rates. Altogether, 64 percent of the direct operating and ownership loans carried the limited resource rates of

4.5 percent and 5 percent respectively. Both of those bargain rates have been in effect this entire lending season.

Interest rate buydowns have exceeded 2,300 loans for $275 million, and subsidies of $16 million. Buydowns account for about 18 percent of all guaranteed loans this year.

Operation Assist has enabled more than 1,300 farmers to obtain loans totaling $110 million so far this fiscal year. Both of these special features are producing real benefits for farmers who might not have been able to continue otherwise.

Mr. Chairman, the evidence clearly shows that Farmers Home is addressing the needs of those farmers who cannot compete in the regular credit markets for their financing. We are meeting our mission as a lender of last resort, and doing it in a prudent manner. Our Agency, however, is not the only source of USDA financial assistance for farmers. Our sister Agency, the ASCS, through as many as 16 different programs, provided almost $26 billion to American agriculture last year, some of it in the form of direct payments instead of loans. I understand this year's totals will be a similar amount.

As you can see, this administration's commitment to agriculture is strong. And while fully supporting that sector, we should also keep in mind that we need to carefully examine the problems of our farmers and not raise false expectations. Their problems, as with those of others, need to be brought to some resolution in a reasonable time.

Perhaps some of the perceived need for a major revision in FmHA procedures has come about from recent press reports purporting to show that the Agency is in the process of foreclosing on 78,000 farmers, or has been stopped from foreclosing on 78,000 farmers. Nothing could be further from the truth.

There never have been any such plans in my time at Farmers Home, and there are no such plans now. What you have been reading is, at best, a misunderstood view of normal delinquent loan servicing. Most delinquency problems are resolved without reaching the point of foreclosure. We are not out to do the American farmer in.

Last spring, about 42,000 farm borrowers were sent letters reminding them of their delinquency and the need to consider ways to resolve that delinquency. Those ways included deferral, rescheduling, and refinancing at limited resource interest rates, among others. More than one-half of those delinquencies have been resolved. We are still working with some others. Still others, about 4,600, have voluntarily entered bankruptcy, apparently taking advantage of the new chapter 12 provisions.

This spring, the same servicing mailing went to fewer than 15,000 farm borrowers. We are unable to give a complete report because we do not have all the details in yet, but we do know that more than 2,400 of this year's delinquencies have been resolved already.

As for S. 1179, we believe it would not allow us to strike a proper balance between meeting the legitimate needs of the American farmers we serve and the public interest in the prudent stewardship of public funds. We strongly oppose its passage.

That completes my prepared statement, Mr. Chairman. I would be happy to answer any questions you might have.

Senator CONRAD. Mr. Clark, there seems to be a difference of perception, a rather radical difference. You see things as being quite good, if I could summarize your testimony. When I go out into the field, and along with my colleagues, we went through five States this spring, and more recently I have just conducted some 40 meetings in 30 towns and cities of my State.

The overwhelming response that we receive is that there are problems with FmHA. How would you account for the difference between what the people who are FmHA borrowers tell us and what you tell us as FmHA Administrator? How would you account for the difference?

Mr. CLARK. Well, Mr. Chairman, I think your presence in those States certainly brings out those borrowers of Farmers Home and perhaps other lending institutions who are so hopelessly overburdened with debt, and are looking to you as one last gasp, if you will, for survival.

You are not talking to the ones who have been serviced. I think you ought to see if you can get to those who are surviving and are making it because of our servicing actions.

Senator CONRAD. Would you describe this as a time in agriculture when people are doing well, by and large?

Mr. CLARK. I do not think I used that word. No. There is still a lot of stress and strife out there, and that certainly makes our burden greater.

Senator CONRAD. Let me just say this to you. As one Senator who has a constituency to serve, when half of my case load involves FmHA, and fully half of my case work in the State of North Dakota involves one Agency of the Federal Government, when half of my mail relating to agriculture involves FmHA, it would seem to me that is a signal that there is a problem. Is your sense that there simply is no problem?

Mr. CLARK. I have not used that term, Senator. Certainly there is a problem out there. But we cannot salvage and save every American farmer in your State or any other State. We have to realize there has to be some failures out there.

Senator CONRAD. I do not think anybody is saying we have to save every farmer. Number one, we do not have the resources to do that. But on the other hand, we ought to make the full effort that can be made to save those that have a chance to survive if they are given some help. I am sure we would agree on that.

Let me turn to the point of your statement that surprised me, and I frankly have trouble understanding. Perhaps you can help me understand. You indicate that you have $7.6 billion of delinquent loans. Is that correct?

Mr. CLARK. That is correct.

Senator CONRAD. That is your current delinquency in the farm portfolio. You indicate that if S. 1179 were passed that there would be a $7.6 billion giveaway of public funds.

Now maybe you can explain to me why that is the case when we are saying write-down the loans only in those cases where you would get more than by going to liquidation or foreclosure? Why would we lose the whole $7.6 billion?

Mr. CLARK. Most of that delinquency total, Mr. Chairman, is greatly overdue. I think 70 some percent of that delinquency is 4 years or more delinquent. And most of that delinquency is composed of emergency disaster loans and economic emergency loans that were booked some years ago. If you start writing down those disaster loans, it is a giveaway program.

Senator CONRAD. Well, then, in effect, have you not already lost that money, and you just have not owned up to it?

Mr. CLARK. That is correct. However, you are really intimating a commitment to go on with those farmers by writing down that debt which says we also have a commitment, then, to continue with them with another year's operating funds. And I think that opens up another can of worms of continuing that debt forward.

Senator CONRAD. Well, help me understand further because this I find most interesting. The hard reality is, I think you would agree, FmHA has already lost billions of dollars. By that I mean we look at this $7.6 billion, and, if I hear you correctly, much of this is 4 years in arrears. We have lost that money. We have just not admitted to ourselves that we have lost it.

Mr. CLARK. That is correct.

Senator CONRAD. So S. 1179 which would write-down to current market value in those cases where you would get less if you went to foreclosure or liquidation is not going to lose $7.6 billion.

Mr. CLARK. Again, I think you are intimating a commitment to go on with those farmers, and I am saying we cannot go on with those farmers that are 4 years or more delinquent.

Senator CONRAD. No, I do not think there is any intimation of anything of the sort. I think there is a recognition that we have already lost the lion's share of this $7.6 billion and so when you assert, as you have in your testimony, that if S. 1179 passes we lose $7.6 billion, that is really not a fair statement.

The fact is we have already lost a good chunk of the $7.6 billion. S. 1179 does not lose you $7.6 billion which one would infer from your testimony.

Mr. CLARK. Well, I hope it is not $7.6 billion today. I think there is at least $2 billion in that portfolio that could be written off with the snap of a finger if we get the paper work done today. I hope there is some hope of salvation of the remainder of that debt. And I am saying that S. 1179 would wipe out that hope of salvation for the taxpayers.

Senator CONRAD. Well, again, let us go back so that we fully understand what both of us are saying because, number one, you have agreed that we have already lost significant amount of what is in this portfolio because it is so far in arrears that there is very little hope of full recovery, or even substantial recovery. Is that a fair statement?

Mr. CLARK. True.

Senator CONRAD. So, number one, S. 1179 does not lose you $7.6 billion because you have already lost a good chunk of that.

Mr. CLARK. Well, let us make it $5.6 billion. Is that any better?

Senator CONRAD. No. No, I do not think that is probably a fair estimate either. And the reason I would say that is because what this bill does is simply say you write down to market value. Now, market value, if we lost half of market value in the last 6 years, you would not be losing the whole amount. You would be writing down to current market value, and only in the case where that would lose you less than going to foreclosure or liquidation.

So, again, maybe you can explain to me how you come up with a full loss when we are writing down to current market value unless you are assuming there is no market value in this portfolio at all?

Mr. CLARK. In many cases, that would just not be a feasible approach. You write-down to the current collateral value. And normally we would go on and liquidate that account and get out from under that account. But you are saying, again, continue with that farmer, write it down to present value, but go on. I guess I would feel more comfortable if we could approach that situation with a commitment not to go on from the Farmers Home point of view.

Senator CONRAD. Let me ask this question. Let me pursue this because I am sincerely interested in attempting to devise legislation here that passes and addresses some of the problems which you yourself, I think, recognize as being out there.

If there was language saying you would write-down if the farmer could then cash-flow, would that make you more amenable?

Mr. CLARK. No, it would not.

Senator CONRAD. So you would not be willing to write-down to current market value even if the farmer could then cash-flow? And even if that would mean less of a loss than going to foreclosure or liquidation?

Mr. CLARK. You are still forgiving debt, Senator, and I think that is wrong.

Senator CONRAD. Well, perhaps that is wrong, but Mr. Clark, if it means the Federal Government gets more than going through foreclosure and liquidation, don't you think that would make good business sense?

Mr. CLARK. That is our difference of opinion. I do not think we would get more. We would go on making loans to borrowers, many of whom have made bad management decisions. Many of whom who outbid values of property that have caused them a debt problem.

Senator CONRAD. Well, Mr. Chairman, that is precisely what this legislation says, though. You would be writing down to market value only in those cases where you would get more by doing so than by going to foreclosure or liquidation. Now, assume with me for a minute that this would be administered properly, and since you would be the administrator, I assume you are willing to make that assumption.

If you could save more, if you would have less of a loss by restructuring, less of a loss to the Federal Government, and the farmer could cash-flow, then would you think it was a good thing to do?

Mr. CLARK. It might look good on paper, Senator, but I tell you the long-term ramifications are wrong. It sends the wrong signals, not only to our borrowers who are not at that stage yet, but I think to all agricultural borrowers who are customers of other lenders.

Senator CONRAD. Well, let me say to you that I find that position an impossible position to defend. I mean if what you are saying is you would be unwilling to write-down a loan even if it would save the Federal Government money to do so, and allow farmers who are out there to stay on the farm, that you would be opposed to that for some punitive reason or some reason I do not understand, then I have difficulty with that.

Mr. **Clark**. Senator, I have been lending money to farmers practically all of my adult life. I can tell you from a pure lender's financial point of view that tact is wrong.

Senator **Conrad**. Well, I will tell you something. We are going to be hearing from commercial bankers very soon who disagree with you completely. They are doing precisely what we are advocating here, absolutely what we are advocating here. They are doing it. They are doing it because it makes good business sense.

I was a creditor for 6 years as the tax commissioner of the State of North Dakota, and if there is one thing that I learned being a creditor is, that there are some cases, many cases, when you are better off restructuring a debt than to foreclose and liquidate because you, as the creditor, get more money. Would you agree with that?

Mr. **Clark**. That is exactly what we have been doing for so many years, restructuring, reamortizing, all of those things. We are up to the point of forgiving the debt and going on.

Senator **Conrad**. Well, that is exactly what this proposes. Now you are telling me that there are times when you favor restructuring and forgiveness of debt. What is the difference?

Mr. **Clark**. I did not say forgiveness. I said restructuring. There are times when we can do that today. But the borrower is still there on a payoff situation.

Senator **Conrad**. Let me ask you this. As a lender, as a lender, have you ever forgiven debt?

Mr. **Clark**. Certainly.

Senator **Conrad**. And why did you do it?

Mr. **Clark**. Well, I think I am going back into my private sector days. There are all kinds of things that are happening there. It could be a death, an estate, serious illness, or whatever. If there was any hope of collecting that debt, you did not do that.

Senator **Conrad**. Right. But when there is no hope of collecting, did you ever forgive debt because it made good business sense to do that?

Mr. **Clark**. Certainly.

Senator **Conrad**. Then why is that not true in the case of farmers?

Mr. **Clark**. It is a farm to farm situation. In the private sector, they deal with each individual farmer separately. I do not think they broadcast that around either. They do not tell the world what they have done within a private situation with one borrower. We are telling the whole world here is a new system. We are opening the door, you know, come in, and we will talk to you and forgive your debt. It is a Pandora's box.

Senator **Conrad**. Well, if you do not—this is a democracy—if you do not tell people what the policy is, then some people know about it and some people do not. Is that what you are advocating?

Mr. **Clark**. The private sector works exactly that way.

Senator **Conrad**. Yes, but this is not the private sector. This is the Federal Government. Maybe that is the confusion that we have here. I mean, are you advocating—I am sure you are not—saying that we have a policy, but nobody knows about it except the some who get it and some who do not?

Mr. CLARK. Your question was have I ever given forgiven debt. And I have in my private sector life, not in government to that extent.

Senator CONRAD. Well, again, it seems to me the same logic that would lead you to forgive debt in the private sector, and if we are going to do it it ought to be done with a policy that is clear and open and consistent. Would you agree with that?

Mr. CLARK. We do forgive debt. It is a liquidation. We will forgive the debt. But we do not go on financing him into the next century of production. We do not. We liquidate an account. We do forgive debt.

Senator CONRAD. Yes. But again, let us go back to what the aim of this bill is. The aim of this bill is to allow restructuring in a case where you get more money that way than you do by liquidating or foreclosing. Does that not make perfect sense?

Mr. CLARK. If it would pencil out, certainly it would. I am saying it would not pencil out that way. We have a difference of opinion on that, obviously, Senator.

Senator CONRAD. Well, I am disappointed because what I hear you saying is that logic that would hold in the private sector somehow does not hold in the public sector. And to me it is so clear. When I served as a creditor, as a tax commissioner, over and over I learned, over and over, that in case after case you were better off to restructure than to foreclose or liquidate because as the creditor you got more money, and, at the same time, you allowed the borrower to continue on, especially if, through no fault of their own, they had hit an economic precipice.

Let me give my colleague, Senator Daschle, an opportunity to ask some questions.

STATEMENT OF HON. THOMAS A. DASCHLE, A U.S. SENATOR FROM SOUTH DAKOTA

Senator DASCHLE. Thank you, Mr. Chairman, and I welcome the Administrator here. I look at Vance Clark, and I look at the Farmers Home Administration, and I cannot decide whether—I know he is a contractor. He is a representative of the Federal Government. The question is whether he is a contractor of a construction crew or a demolition crew.

I really do not know when I look at the Farmers Home today whether it is more demolished, or whether it is in better construction than it was when he started. But I really do not put all the fault on him. I put the fault on OMB for not adequately providing him with adequate funding. I put the fault on this administration for not giving him the tools with which to work. I put the fault on many of his top leadership within the Department of Agriculture for not creating a policy through the Farmers Home that is tangible, that is focused, that gives any kind of a coherent approach to lending policies in the time that he has been there. And that is what is disappointing to me.

I think when one would ask today in Washington or in any county in South Dakota what is the policy of the Farmers Home

Administration with regard to lending, no one can say what it is. It is nonexistent. And to that extent, I think there has been a demolition crew at work in the Farmers Home Administration.

I find this somewhat amusing really that we talk about forgiveness and forbearance when we are told by Third World countries they are not going to pay back their debt, we are told by countries all over the world, allies and foes alike, that restructuring of debt goes with the contract, goes with the loan. We just are willing to accept that. It seems to me the farther away you are from Washington, especially if you live abroad, you have a darn good chance of getting forbearance and restructuring of debt. But if you are in some farm outside the capital city in North or South Dakota, there is absolutely no chance of getting forbearance and the kind of restructured debt or forgiveness, and that is what driving people into chapter 12 bankruptcy, more than anything else. Chapter 12 is becoming the panacea, the only way that farmers can get assistance, and chapter 12 ought not be the solution. Chapter 12 aggregates and further complicates lending practices. It does not solve anything.

But that is what our policy is. It is a de facto chapter 12 bankruptcy situation that has to be alleviated. I would hope, I sincerely hope that at some point, we can come together as Democrats and Republicans, as people in this administration, as people in Congress, and say, look, we can reorganize the Farmers Home and provide the kind of forbearance and the kind of latitude that we need in lending practices that we just do not have today.

I would like to ask a couple of questions along these lines. First of all, if you could define in 25 or 50 words or less what the current policy is with regard to restructuring of debt and forgiveness of loans, what would it be? Universally, to a farmer, whether he is in North Carolina or South or North Dakota, they walk in, and they say, all right, we have the expectation that we know that there is such a program. Define it for us.

Mr. CLARK. Our program is universal, Senator. It is no different in your State than it is in Mississippi or California.

Senator DASCHLE. Then why is it not administered that way, Mr. Clark?

Mr. CLARK. I think it is, and you and I have a problem about that solution as well. I am telling you the policy is——

Senator DASCHLE. Tell me what it is in 50 words or less.

Mr. CLARK. Our policy is to work with our borrowers to do whatever we legally can to keep them in that operation, to use all of the servicing tools that we have to keep them on that farm, and the last thing is to foreclose on their property. We do not want their farm. And I think you will find us bending over backward——

Senator DASCHLE. Why don't you tell your supervisors that?

Mr. CLARK [continuing]. All across the Nation to do just that.

Senator DASCHLE. You really believe that. Why do your supervisors not carry out that attitude if that is your policy?

Mr. CLARK. I think they do.

Senator DASCHLE. You really do?

Mr. CLARK. I certainly do.

Senator DASCHLE. Then why are so many people going into chapter 12 today?

Mr. **Clark**. Well, again, those are borrowers who are so far down that tube, if you will, that there is no salvation.

Senator **Daschle**. Why are so many people waiting in line to get some kind of assistance? Why is a restructured debt application 6, 8, 10 months in the making? Why does it take that long if you are so aggressively pursuing this kind of a policy?

Mr. **Clark**. Senator, I have asked you before to give me examples. It is not an 8 or 10 month waiting period. That is just not true. And I ask you to give me a name somewhere in your State because that is not so.

Senator **Daschle**. I tell you what. I will have some on your desk tomorrow morning.

Mr. **Clark**. Thank you, and I will be happy to report back to you.

Senator **Daschle**. I would like to know, though, how is it that there are so many people out there who complain to me about the lack of availability of loans, who complain to me about the lack of cooperation that we are getting from supervisors in the State of South Dakota today, and then you turn around and say we are going to aggressively pursue this and we are going to be as fair and accessible as we can be? There seems to be a dichotomy 3 miles wide, Mr. Clark, between what you are suggesting and what is actually reality out there. I do not understand where the breakdown in communication comes. But clearly, there is a huge breakdown in communication between what you think your policy is and what is actually articulated and implemented in the rural parts of South and North Dakota.

Mr. **Clark**. I would suggest you pick at random county supervisors, four or five of them across the Nation, and you ask them that same question, and I will not talk to them before they appear at this table, because that is just not so.

Senator **Daschle**. The question is not the articulation of your policy. I am sure they will say the same thing. They may have a policy, a company line, that right down the line they read word for word from what you have just said. The problem is in implementation. Either you are not given the tools, or if you have the tools you're not using them. It is one or the other.

But we would not be here. I mean we are obviously very sensitive to this thing because we are out there all the time, and we would not be here if we do not hear it all the time. There would be other things we could be doing with our time and your time. But we are hearing it. Now one of two things is happening. Either we are being lied to, or we are being lied to here, one of the two.

We are either not being told the truth in South Dakota, or we are not being told the truth in Washington. And given the frequency with which we are getting these complaints in South Dakota, it has got to be the latter here in town. I mean we hear these policies time and time again. You were here 4 months ago, and you said the same thing. We go back and we hear something totally opposite in South Dakota.

Mr. **Clark**. There is a spark of discontent in both your States, and you seem so anxious to throw gas on that spark. It is very disappointing to me.

Senator **Daschle**. Where do you think it comes from? Where do you think it comes from?

Mr. CLARK. I think you look very hard for it.

Senator DASCHLE. You do not have to look very hard for it. Let me tell you.

Mr. CLARK. I again throw the challenge out. You call at random any of our people throughout our 14,000 employees and ask them the same questions. Our policy is uniform.

Senator DASCHLE. We will get the same rhetoric whether it is in Pierre or Washington. Rhetoric is not what we are looking for. What we are looking for is results.

Mr. CLARK. We have results to prove that it is working, too. 100,000 cases last year that we have resolved.

Senator DASCHLE. 100,000 out of how many? How many borrowers do you have?

Mr. CLARK. 274,000. And they are not all past due.

Senator DASCHLE. You say you have resolved more than 100,000 cases.

Mr. CLARK. I say we have offered special servicing action last year to help resolve those cases.

Senator DASCHLE. Special servicing action, does that include voluntary liquidation?

Mr. CLARK. Yes.

Senator DASCHLE. Well, of course. What kind of special servicing is that? You know bulls service cattle, too, and there is another name for that.

Mr. CLARK. The word is "volunteer."

Senator DASCHLE. You are right. Cows would say that, too. Well, I have no other comments or questions.

Senator CONRAD. Again, I find the gap between what I hear you saying and what I find in my State just enormous. You have just said you are restructuring. You have the legal authority to restructure; right?

Mr. CLARK. Correct, and we do.

Senator CONRAD. And does restructure include forgiveness of debt?

Mr. CLARK. It can, yes.

Senator CONRAD. But you think it is wrong to forgive debt?

Mr. CLARK. In a liquidation basis, no. And we do that all the time.

Senator CONRAD. Well, Mr. Clark, what logic leads you to a conclusion that it is OK to forgive debt in a liquidation, but it is not OK to forgive debt in a case that would allow somebody to stay on the land when that would leave the Federal Government with less of a loss? That is what this bill tries to do. Are you against that concept?

Mr. CLARK. I am against the inference in there of a commitment to go on with more money, and I am against that. If we charge off $100,000——

Senator CONRAD. Now, wait a minute. Let us not deal with inferences. Let us deal with what is in the bill. There is no requirement that you go on. What it requires is that in those cases where the Federal Government would experience less of a loss, we would write-down to current market value. Now you have the authority to restructure and that includes forgiveness of debt. You say you do it in liquidation.

Mr. CLARK. We do.

Senator CONRAD. Why would you not think that was something worth doing if it would leave the farmer on the land and allow the Federal Government to lose less?

Mr. CLARK. I repeat. We would not be losing less because you would need to extend more credit.

Senator CONRAD. Ah, now wait a minute now. You are making an assumption. Why not? If you could have a situation where it was demonstrated you would lose less, would you take that kind of deal?

Mr. CLARK. Logic says yes. But let me tell you, if you pass this bill, and force us, if you will, to write that debt down, and then we refuse to grant credit, ongoing credit to that individual, I will be up here at your table again.

Senator CONRAD. Let me ask you this. Are there any sections of this bill that you can support?

Mr. CLARK. I would have to look hard, but I think there is something in here about county committee people, extending notification periods of election county committee people, I think we could probably go along with some of those, yes.

Senator CONRAD. Let us go section by section. We know we have a very clear and serious difference on section 1. Section 2 provides standards for loan servicing, eligibility and reform, requires FmHA to notify the borrower of all loan servicing options to provide means by which the borrower may apply for each alternative.

Now that is the subject of a Federal court suit, and the judge has made clear that this kind of thing needs to be done. So I assume that you do not oppose that.

Mr. CLARK. No, I think we are doing that.

Senator CONRAD. Well, the judge did not think so.

Mr. CLARK. I realize that. I say I think we are doing that.

Senator CONRAD. The borrowers did not think so that brought the suit. So why not, why do we not do this? We are going to have to do it anyway; right? Let us look at section 4. That is the reform of the election procedures. That you feel has some merit?

Mr. CLARK. Yes, I do.

Senator CONRAD. Section 5 requires that appeals of FmHA administrative decisions be held before hearing officers appointed by the Secretary, and that such hearings be conducted in accordance with administrative law. What is your reaction to that?

Mr. CLARK. I am opposed to it.

Senator CONRAD. And for what reason?

Mr. CLARK. Mr. Chairman, credit decisions are unique and different. You know it is a form of art as well as a logic as you analyze credit. And I think somebody from the outside trying to determine whether or not a credit is creditworthy causes us some real problems.

Senator CONRAD. Let me then ask you in how many cases, in what percentage of the cases are FmHA appeals successful?

Mr. CLARK. As I recall 82 percent of the appeals are upheld. The rest of them are granted in favor of the borrower so I think that system is working. That is not a bad record.

Senator CONRAD. The number I have is that 2 to 5 percent of FmHA appeals are successful.

Mr. CLARK. Well, the last figure we had was almost 19 percent. However, there are different sectors of success, if you will. Some are withdrawn. Some are restructured and redone in some way, and some are strictly turned over.

Senator CONRAD. Well, let me just say if we have a factual misunderstanding between us, we should get that clear. My statistics indicate that 2 to 5 percent of FmHA appeals are successful, and where agencies have independent appeals officers, 20 to 40 percent of appeals are upheld. So that is an enormous difference. That is the reason for this section. If, in fact, 18 percent of your appeals are being upheld in favor of those who bring the question, that is a dramatic difference.

Mr. CLARK. I will be happy to furnish that to you.

[The following information was subsequently received by the committee:]

Mr. CLARK. A recent survey conducted in twelve states covering FY 1986 and through May 31, 1987, indicated that 3,444 appeals were received. Of this number 271 were withdrawn and 375 were modified or overturned. Discounting those appeals which were withdrawn 11.5 percent of the appeals are either modified or overturned by the review process. If the withdrawal of the appeal resulted from the applicant and FmHA reaching an agreement then the percentage of appeals being modified or overturned increases to 18.75 percent.

Senator CONRAD. Let us look at section 6: It requires FmHA to participate in programs for credit resolutions required under State law prior to initiation of foreclosure activity. What is your feeling about that section?

Mr. CLARK. Well, again, I am against it.

Senator CONRAD. Even though those State programs have been enormously successful in dispute resolution.

Senator DASCHLE. Would the chairman yield for just a minute?

Senator CONRAD. Yes.

Senator DASCHLE. I have to go back to what you said in your answer to my question about what is the policy of the Farmers Home Administration. And what did you say, Mr. Clark? You said something to the effect that we will do everything possible, we will bend over backward to help every farmer that legitimately can be assisted in some way to restructure their loan. We are going through a section-by-section analysis of a bill, and in section by section you emphatically say you are opposed to it.

Now how in the world can you rationalize what you told me and what you are reporting to Kent Conrad? I mean it seems to me that is a public dichotomy coming at the same sitting from the Administrator who claims to have such forbearance in his attitude toward farmers. How do you rationalize that?

Mr. CLARK. Well, you want to stick a lot of fingers in the pie, Senator. The more fingers you get in there——

Senator DASCHLE. Just answer the question. What is your answer to that? How can you express forbearance and a willingness to cooperate and do everything you can for the farmers and then turn right around and say, but we oppose the bill that will do just that?

Mr. CLARK. In your opinion that works. In my opinion it does not. We think we can do it on our own. You are saying let somebody else be part of that decisionmaking process, somebody outside, and I am against that.

Senator DASCHLE. But is that not going along with what you just said? Can you not provide greater assistance by advocating something like this? Is this not a tool that you could use?

Mr. CLARK. No.

Senator DASCHLE. Why not?

Mr. CLARK. Again, it is bringing in outsiders to help make our credit decisions.

Senator DASCHLE. Well, if you have a fire that is bigger than your ability to put it out, would you not call in the local fire department to help you?

Mr. CLARK. I do not think our flame is that high.

Senator DASCHLE. Well, I tell you what. You are going to get engulfed with them here pretty soon if you have not been already, and most of these guys are dying in the process. And you have people yelling for help, and you have a little garden hose squirting out the back bedroom. I mean it is just incredible to me, and I hope that the hearing will so indicate.

It is rhetoric. That is all we get from the Farmers Home Administration time and time again is rhetoric. And I cannot think of a more glaring example of just the pure poppycock rhetoric than what I am getting this afternoon and this morning as I hear your responses to these questions.

Senator CONRAD. Let me just close out section 6, and then we will ask Senator Melcher if he would like to have an opportunity to ask some questions. Section 6 also directs the Secretary to follow a specified preference order in selling acquired land. Do you have any problem with that part of section 6?

Mr. CLARK. I am sorry. Inventoried land?

Senator CONRAD. Yes, it sets up a priority order which is, number one, the person from whom the Secretary acquired the property; number two, the immediate family of the person referred to in paragraph one; or three, in the event the person from whom the Secretary acquired the property is a native American from a recognized tribe, other members of the same tribe, or a tribal corporation or partnership of members of the same tribe. In other words, it sets up a priority order that goes a little beyond the principal to the immediate family, and in the case of the tribe to other tribal members.

Mr. CLARK. We are doing that now. As you say, it goes beyond what we are doing. We are now offering that land to the previous owner or operator and that is working. We are doing that.

Senator CONRAD. Yes, but this goes——

Mr. CLARK. You want to go beyond to the kin, if you will.

Senator CONRAD. Right. For example, the children. I have cases right now pending in my State where the father owned the land, and he is simply too old to be the one to buy it back. And he has sons who grew up on the place. It seems to us there would be some logic to having those people in line.

Mr. CLARK. I would have no problem with that, and we could work it into our present regulations.

Senator CONRAD. OK.

Mr. CLARK. It does not take a law to do it.

Senator CONRAD. Well, it does take a law if you do not have it in the regulations and they are not there now.

Mr. CLARK. You have never brought that up before. Nobody has brought that up before.

Senator CONRAD. Oh, yes, I have. In fact, in the meeting in my office between you and I, we talked about that specific item, and that was a month ago.

Senator Melcher, if you have questions.

Senator MELCHER. Mr. Clark, one of the criteria I attempted to instill in my office last year was that when staff was working with someone, farming or ranching, in our State, that was losing their ability to obtain credit, whether it was with the commercial lender, the insurance company or PCA, or Federal land bank, or Farmers Home Administration, was that had the highest priority, because we are dealing with business people in agriculture. And I mean that. The farmers and ranchers who have survived these serious economic times, and who have thus far managed to float along, not very safely or soundly, are at least still in the business. So they had to have fairly good business practices.

We have constantly run into a bottleneck on Farmers Home Administration loans. I have not checked in the last 60 days, but there seems to be a policy of just dropping those that had serious delinquencies and not trying to do anything about it. And second, the caseload was such that they were way behind processing paper.

I would like to ask you about the first one. Surely it is not your policy to drop farmers and ranchers who happen to have a rather high delinquency at this time?

Mr. CLARK. It is not.

Senator MELCHER. And so you are attempting to restructure their loans?

Mr. CLARK. We are.

Senator MELCHER. In the case of where you cooperate with a bank, is that part of it in some cases?

Mr. CLARK. Yes, it is.

Senator MELCHER. And what is the interest rate for them?

Mr. CLARK. That interest rate for a bank and their borrower is negotiated between the two of them. However, we stand ready with an interest buydown feature that could lower that rate effectively 4 percent to the borrower.

Senator MELCHER. And are you using that interest buydown?

Mr. CLARK. Yes, we are.

Senator MELCHER. In how many cases? You testified there are $7.6 billion in delinquency farm loans right now.

Mr. CLARK. Yes, our interest buydown feature is also in my testimony, Senator. We have made loans for $275 million this year. Subsidies, $16 million. About 18 percent of all of our guaranteed loans this year are interest buydown loans.

Senator MELCHER. About 18 percent?

Mr. CLARK. Yes.

Senator MELCHER. Are you using it to 4 percent or somewhere in between, or less than 4 percent buydown?

Mr. CLARK. We will match the banker's reduction. So if he reduces that rate 1 percent, we will match it with 1 percent. We will not match over 2 percent.

Senator MELCHER. How many are doing that?

Mr. CLARK. Again, over 2,300 loans were booked for this year that way.

Senator MELCHER. Well, I guess I am at a loss. What does 2,300 loans represent in this total $7.6 billion delinquency?

Mr. CLARK. That has nothing to do with delinquencies. Those are brandnew loans granted this year.

Senator MELCHER. They are not, then, in the restructuring.

Mr. CLARK. They could be, and I cannot tell you what portion of delinquencies. That really should not affect our delinquencies, Senator. That combination with a banker is new credit, or restructured credit out in the banker's portfolio, not ours.

Senator MELCHER. So it really does not involve delinquencies in many instances?

Mr. CLARK. Well, it could in subordination. We could subordinate our loans to a bank that is willing to go on, and we have done that in a great many cases this year.

Senator MELCHER. Well, in the subordination process which I am familiar with, is interest buydown used in that instance?

Mr. CLARK. Yes, it could be on the banker's point.

Senator CONRAD. Would the Senator yield for a question just on this point?

Senator MELCHER. I will in a moment. Do I understand you that it could be or is? The question is what is, not what could be.

Mr. CLARK. I cannot give you exact numbers, Senator. We will try to churn some of those up, if you like.

Senator MELCHER. I would like to have them. Yes, I yield, Mr. Chairman.

[The following information was subsequently received by the committee:]

Mr. CLARK. Excuse me, Senator Melcher, before I provide you with the exact number of interest buydowns on guaranteed loans, I believe I may have misunderstood your previous question regarding restruction of loans and my responds may not have been appropriate. FmHA will subordinate its lien position to permit a lender to restruction or make a new loan without an FmHA guarantee. However, it has been FmHA's policy not to subordinate its lien position to a guaranteed lender when the lender believes additional security is needed before making the guaranteed loan. Keeping this in mind, FmHA would not be able to grant a subordination to a lender seeking a guaranteed loan. The only exception to this would be if FmHA had a security interest in the crop and a lender wanted to make a guaranteed annual operating loan, then FmHA would subordinate its interest in the crop to permit the lender to secure the guaranteed annual operating loan with a first lien position on crops. Now, for the record, as of June 3, 1987, FmHA has assisted 1,801 borrowers with interest buydown. This represents 2,377 loans totaling $275,199,167.90. The dollar amount of interest buydown on the loans total $16,143,805.67.

Senator CONRAD. You indicated there has been $16 million of subsidy in interest buydowns?

Mr. CLARK. That is correct.

Senator CONRAD. And what is the total program amount? What are the resources you had available to you in that?

Mr. CLARK. $290 million for this fiscal year.

Senator CONRAD. $290 million, and you have used $16 million?

Mr. CLARK. That is correct.

Senator CONRAD. And you make the assertion here that you are doing everything possible to help?

Mr. **Clark**. Those numbers came from the Congress, Senator. We did not churn up those numbers.

Senator **Conrad**. Well, Mr. Clark, you have just made the assertion here that you have done everything you can in your Agency to help. And you have $290 million available to you in that program and you have used $16 million of it?

Mr. **Clark**. You cannot lay that on to me. We need to go out and market the banks on it. The bankers are the ones that have not jumped onboard on that program as we had hoped they would.

Senator **Conrad**. So the reality is that is a very small piece of the pie?

Mr. **Clark**. It is.

Senator **Conrad**. Very small piece of the pie. And you had $290 million available to you to use in that program, and you used $16 million. And you assert to us that you are doing everything you can to help.

Mr. **Clark**. Yes, we are.

Senator **Conrad**. That is hard to believe.

Mr. **Clark**. Well, you ought to talk to America's bankers. Do not chew on me about that one.

Senator **Conrad**. Well, that is the program that you wanted, Mr. Clark. You told us that is the program that would be most beneficial. You wanted guaranteed loans, did you not?

Mr. **Clark**. Yes, we do. But the interest buydown came out of, I think, your section, not ours.

Senator **Daschle**. But the interest buydown is something that would appeal to these bankers. What the bankers tell us is that you have made it so complicated that they cannot use it. You mean that you want to tell me that is the only reason they are not using that program is because you have afforded them the opportunity, and they choose for whatever reason not to use it? Is that what you are saying?

It seems to me if you have a tool, Mr. Clark, as effective as the guaranteed loan could be with the buydown feature which makes it more, a much better tool, a more effective tool than if you did not have the buydown, that the bankers would use it. The bankers are not using it because it is not a very good program today. It is the paper work, the kind of length and delays, the approval process. There are so many obstacles in the road to approval to a guaranteed loan today that they tell us across the board that they cannot use it. And it is no surprise to me that only $16 million of the $290 million is being used.

The fact is the Farmers Home does not want them to use it.

Mr. **Clark**. Senator, that is not true. You cannot push a string.

Senator **Daschle**. Prove it to us. Prove it to us. Can you? Can you prove it to us?

Mr. **Clark**. In what way?

Senator **Daschle**. That what I have just said is not true.

Mr. **Clark**. Paper work burden and——

Senator **Daschle**. That is right. It is ironic that at the same time you have this paper work reduction force out there somewhere, Farmers Home keeps loading more and more on the bankers telling them go ahead, use this program, we dare you.

Mr. CLARK. Again, that is not true. We work very close with America's bankers, and they helped design that program.

Senator DASCHLE. Well, why are they not using it then?

Mr. CLARK. I am telling you you cannot push a string. I will tell you one reason. They have to lower their interest rates. They have to give up earnings to make that program work. A lot of them are unwilling to do that.

Senator DASCHLE. They have to give up earnings in the short term, but they know they have a viable farmer out there who if they can just help the farmer through a couple of tough years yet, that these guys are going to make it. But they do not have the tool. It is nice to have it sitting up there on the mantelpiece. You can dust it off once in awhile, but the fact is bankers are not using it simply because it is not a practical tool for them to use.

Time and again I am told that. Across the State, across the country, Farmers Home does not want us to use this tool.

Mr. CLARK. We have booked $275 million in guaranteed loans. That is not exactly a failure, Senator.

Senator DASCHLE. $16 million is what we are talking about, not $275.

Mr. CLARK. That is the amount of loans booked. That is the amount of loans those bankers have booked. $275 million.

Senator DASCHLE. What is the $16 million?

Mr. CLARK. That is our interest subsidy. That is what we have committed to help pay for that $275 million bookings. That is the interest we will pay those bankers for booking the $275 million.

Senator CONRAD. But you had $290 million that could have been used instead of the $16 million; was that your testimony? I am told there was $480 million available for interest buydowns.

Mr. CLARK. Well, that is over a 3-year program, as I recall.

Senator CONRAD. And so for 1 year, it would be how much?

Mr. CLARK. This year. This year.

Senator CONRAD. How much?

Mr. CLARK. $290 million. We had a carryover from 1986, of unused dollars.

Senator CONRAD. So you had $290 million that could have been used this year, and $16 million has been used? Six percent. I tell you I would hate to tell somebody I had been doing everything I could do while having used only 6 percent of the resources available to me.

Mr. CLARK. If you learn to push a string, please let me know, Senator. I have not learned that yet.

Senator MELCHER. Mr. Clark, the second part of my question dealt with the personnel available. Has Farmers Home been able to solve the personnel question? That is do you have adequate number of personnel that are experienced and have you gotten rid of the mounds of applications that were there this spring?

Mr. CLARK. Senator, I know that this is one of your concerns of inadequate numbers out in the field, but I think we have been doing well. We have about 14,500 employees. I think the budget process has allowed us an adequate number to do those things. We put a lot of temporary help in the field to get over those peaks and valleys, the peaks particularly, the demand out there in the crop season. I think if you will talk to some of our States, you will find that those numbers have been adequate for 1987.

Senator **Melcher**. In other words, the mounds of paper have disappeared, and you've dealt with the applications and the forms that were necessary to get through before the loans could be made?

Mr. **Clark**. No, there is too much paper. I do not think we will ever get away from that.

Senator **Melcher**. Have the applications been processed to date?

Mr. **Clark**. Yes, they have. There are very few left in our pipeline for this crop season.

Senator **Melcher**. Now, Mr. Clark, just as I talked to my staff over a year ago, and we had to exert every effort on behalf of these people, I say the same to you. We are going to have to exert every effort this summer and fall to make a better situation for these borrowers. I understand that land values are beginning to rise again in farming and ranching country. Have you seen indications of that?

Mr. **Clark**. I am not sure that is the term, but I see a lot of evidence of it bottoming out, and no further depreciation in many parts of the country. We are selling a bit more land from our inventory. That causes us some feelings of relief.

Senator **Melcher**. Are the reports that are circulating now accurate that farmland has shown a stabilization, and there is some indication of about a 5 percent increase in value?

Mr. **Clark**. I cannot say that, no. In some parts of the country there might be some evidence of that, but that is a broad statement nationwide. I do not believe that.

Senator **Melcher**. Is there any truth to it as you can find in, say, the Corn Belt?

Mr. **Clark**. I just returned from Missouri the other day, and we are selling considerable numbers of property in Missouri, which says at least, the bottom is there, and people are recognizing that it might be a viable investment, and some of the land is moving.

Senator **Melcher**. Then it is more critical than ever to exert every effort to deal with the delinquent borrowers. In my view, as one of the members of this committee, we must tie amendments to Farmers Home Administration action to the farm credit bill that is being drafted.

So it would seem to me—at least this is my view—that the day of cooperation between Congress and Farmers Home is right now. The question of interest buydown is one that is vital to restructuring the loans. If you make a direct Farmers Home Administration loan, what is the interest rate for operating borrowers.

Mr. **Clark**. Today, 7½ percent, or a limited resource, 4½ percent.

Senator **Melcher**. So it is either 7½ or 4½. And commercially is it about 10 or 11?

Mr. **Clark**. Probably, yes.

Senator **Melcher**. It is 10 to 11. A restructured loan is nothing if it does not bring down the interest rates. To do that we are going to have to have the cooperation of the Department of Agriculture in the next few weeks. How are we going to get that?

Mr. **Clark**. I am not sure I understand your question, Senator.

Senator MELCHER. Interest buydown is key in a restructured loan.

Mr. CLARK. From the banker's point of view.

Senator MELCHER. Putting that the other way, interest rate reduction is key in the restructured loan.

Mr. CLARK. Yes.

Senator MELCHER. One way of getting it is an interest buydown. The other way is to have more direct loans. Now you can testify however you want and talk about pushing the string however long you want, but I am here to tell you, and I came over specifically to tell you, that we expect some cooperation out of the Department of Agriculture on Farmers Home Administration in the next few weeks.

I do not think that any of us are here to stay forever in Washington, but Senators are probably going to stay longer than the people in the Department of Agriculture that are appointed. I would like to ask you, and I would like to get your assurance, Mr. Clark, that in the coming few weeks we are going to have that cooperation; we do not have to beat up on the Secretary of Agriculture to get it.

Mr. CLARK. I pledge to you, Senator, my cooperation. We will work with you. You give us some ideas that we can plug into our regulations to provide relief, and if we can come together on those agreements, we will do it.

Senator MELCHER. I am also talking about amendments to the law. We will leave your regulations out of it for the time being. There has to be some solid recommendations within the Farmers Home Administration bureaucracy in regard to making this work better. I am talking about the law itself, how much you have available for direct loans, and how much you have available for interest buydown if that is a viable method. But it does not seem viable at this time, as I understand it. Over 3 years' time, you would spread $480 million in subsidized interest buydown, and that is hardly a dent on the portfolio of $28 billion or $29 billion.

Mr. CLARK. Yes.

Senator MELCHER. I think we can work together, but there has to be a willingness to get beyond this stage of saying, well, we can make do, we can change our regulations, or we can do something else under the law. I am talking about changing the law so that if it is true that land values have begun to bottom out, perhaps some slight increase in some areas, we can take advantage of that. It is very, very pertinent that we keep boosting that along, not just for the individual borrowers and not just for rural America, but for all America. This recovery of agriculture would be the most welcome economic news that I can imagine if there truly is a start of a recovery. Thank you.

Senator DASCHLE. Mr. Chairman, could I ask just two additional questions? One is, if Mr. Clark could give us, the percent of land which is being held by the Farmers Home through foreclosures and voluntary liquidations that has been sold?

Mr. CLARK. Over what period?

Senator DASCHLE. Over the last, say, year.

Mr. CLARK. Percent of land. It is very minimal, Senator.

Senator DASCHLE. Do you know what the figure is?

Mr. **Clark**. I am not sure we have that. We will be happy to give it to you.

Senator **Daschle**. Could you also, as you give us the figure, indicate the amount of land sold to buyers whose prime source of income is the farm and other buyers whose prime source of income is off the farm? Do you understand the question.

Mr. **Clark**. Well, it would be easier to give it to you in surplus and eligible property. Would that meet your needs?

Senator **Daschle**. Yes, it would.

Mr. **Clark**. We will be happy to give it to you.

[The following information was subsequently received by the committee:]

Mr. **Clark**. We do not have a report with a break-down of this information but a recent limited survey of sales of farms from FmHA inventory during fiscal year 1986 and the first three months of fiscal year 1987 indicated that: 47.5 percent of the sales are to existing farmers, 17.1 percent of the sales are to new or beginning farmers and 35.4 percent of the sales are to other buyers which includes cash sales to individuals who derive their income from farming. Since they are cash sales, occupational information is not required concerning the buyer.

The number of farms sold during this period were 1,038; FmHA's average size farm in inventory is 291 acres; therefore, the total farms and acres sold to existing and beginning farmers during this period, is 671 farms totaling an estimated 195,261 acres.

Senator **Daschle**. The second question is the rationale for the second signature requirement?

Mr. **Clark**. I am sorry?

Senator **Daschle**. Recently new regulations were proposed dealing with the second signature required of borrowers who may not own the land, who are renters and obtain a second signature of the landlord for an operating loan. What was the rationale for that? Why is the change required now.

Mr. **Clark**. I am not aware of that happening, but we will be happy to look into that as well. I am not aware of that.

Senator **Daschle**. You are not aware that the Farmers Home is requiring borrowers who are renters to obtain a second signature of their landlord in operating loans?

Mr. **Clark**. No.

Senator **Daschle**. So that must be a State requirement?

Mr. **Clark**. No, it should not be. Our requirements are nationwide.

Senator **Daschle**. Could you get back to us?

Mr. **Clark**. Would be happy to.

Senator **Daschle**. It has really caused a furor in South Dakota. I sure would be interested in finding out what the deal is.

Mr. **Clark**. Be happy to. The landowner certainly should not have to sign it if he leases the land.

Senator **Daschle**. That is right.

Mr. **Clark**. He is not responsible for that debt. The operator is.

Senator **Daschle**. Well, that is happening. I would be interested if either of the other senators have heard complaints about it, but I have had that complaint. I have been home three times in the last month, and it is probably the most prominent complaint I am getting in South Dakota right now.

Mr. **Clark**. Can you give me a county?

Senator **Daschle**. You bet. I can give you lots of counties. Lake County, Miner County, Beadle County.

Mr. **Clark**. We will be happy to get back to you.

Senator **Daschle**. Thank you.

[The following information was subsequently received by the committee:]

Mr. **Clark**. We have visited with our South Dakota State Office officials regarding Senator Daschle's complaint that FmHA was requiring borrowers who are renters to obtain the signature of their landlord on the note for operating loans. The South Dakota State officials are not aware of any such instance where a landlord was required to co-sign the note of the renter who was obtaining an FmHA loan. However, the State officials did advise of a clarification in the State Regulations which requires the spouse to sign the security agreement for chattel loans, this is a concern when one of the spouses has made application for a loan but the chattel property being pledged by the applicant/borrow is owned jointly by both spouses. The applicant/borrower is required to sign the note but the spouse is not required to sign the note, only the security agreement.

Senator **Conrad**. If we can just quickly go through the other sections of the bill to get your reaction, Mr. Clark, to see if there are other areas of agreement. Section 7 sets out certain standards for the lease back of land to the former owner or owners. What is your reaction to that section, the farm lease back program?

Mr. **Clark**. We are presently doing that, as I recall. That option to lease and buy back goes to the previous operator. Now if you want to carry that on to kin, I certainly would not have any objection to that.

Senator **Conrad**. Section 8 requires the Secretary to release borrower income sufficient to assure a reasonable standard of living for the borrower and borrower's family, and to pay all necessary farm operating expenses. Do you have a reaction to section 8?

Mr. **Clark**. We are doing that. That is part of our——

Senator **Conrad**. The problem is—you are doing it. But the problem is the tremendous difference from region to region within a State and region to region among States about what that policy is. If you have people staying to hear the testimony of others who will follow, you will hear, as we have heard, that there is a significant difference in the handling, that there is not some clear and consistent policy on that.

That is the reason this section is here.

Mr. **Clark**. Our original documentation of that loan sets out those expenses that will be released when it comes to that point in our——

Senator **Conrad**. So you do not have a problem with the notion of having some consistent handling of expenses?

Mr. **Clark**. We think it is in place already.

Senator **Conrad**. This is an area where there is clearly an enormous difference of perception. I hear it all the time. Section 9 provides direction to the Secretary in providing borrowers the opportunity to buy back the family farm homestead buildings, the so-called homestead provision. Do you have a problem with that?

Mr. **Clark**. Again, we think the homestead provisions are adequate as they are. We are now allowing that to happen.

Senator **Conrad**. Well, again, I tell you again, there is an enormous gap between what the professed policy is here and what we get back home.

Section 10 establishes a State Farmers Home Administration Policy Board elected by county committees to analyze and over see the effects of Federal and State FmHA policies and to determine the level of lending needed by farmers of the various States. This would be along the lines of the ASCS State board. That is the reason for it. It is basically to give the State director policy guidance, give him a sounding board.

Mr. CLARK. As a mandated issue, I do not think it should be in there. We now have an informal board in Iowa, for example, for just that reason. But when you get into making determinations of dollar allocations for loans, I think you are stirring up a big pot of trouble.

Senator CONRAD. No, no, no. We are talking about—no, we are not talking about that. We are talking about them determining, making a recommendation on how big the pot needs to be.

Mr. CLARK. Again, we have a board that we are piloting now in Iowa, and I would like to see the results of that.

Senator CONRAD. It works for ASCS. It would seem there would be no reason it could not be helpful, frankly, two ways, helpful to the Agency, helpful for the perception of the Agency among those it serves. That is the purpose, and I would urge you to take another look.

Let me just return to one other thing because I do not want to leave here without telling you, and getting this issue nailed down even further. We have had a lengthy discussion on the question of your testimony that S. 1179 is a $7.6 billion giveaway. I dispute that. I think that is terribly misleading given the fact that you acknowledge yourself that FmHA has already lost billions of the dollars which are delinquent. It is just a matter of when you take the writeoff, when you recognize it. And number two, I dispute the $7.6 billion since we are not talking about writing off the whole loan. We are talking about reducing it to market value when and if it would mean less of a loss to the Federal Government than foreclosure or liquidation. So, I want to make it very clear to all of those who are here, the fact is much of that $7.6 billion, which is delinquent, is gone.

Is there a breakdown, which you have readily available, on how delinquent the $7.6 billion is? How much of it is 4 years in arrears. How much of it is 3? How much? Could you give that to us here? Have you got those numbers?

Mr. CLARK. Yes, we do have that available. Again, as I pointed out earlier, the economic emergency loans that we made some years ago and the emergency disaster loans are the biggest segment and problem of that stressed portfolio. Of the $7.6 billion, 3 years or more, 75 percent of that debt is 3 years or more.

[The breakdown of delinquent amounts follow:]

Aging of Farmer Program Delinquent Amounts *

RC 616, March 31, 1987
Insured Loans

PROGRAM	Amount Delinquent ($1000)	Percent of Total Amount Delinquent By Length of Delinquency			
		1 Year or Less	1-2 Years	2-3 Years	3 or More Years
Farm Ownership	$531,719	14.0%	14.5%	12.0%	59.5%
Farm Operating	$1,468,665	24.2%	19.0%	13.6%	43.2%
Emergency	$4,308,899	3.5%	4.4%	4.2%	87.9%
Economic Emergency	$1,243,023	4.4%	9.9%	9.5%	76.2%
Soil and Water	$46,597	10.0%	11.6%	11.1%	67.3%
All Others	$8,464	8.2%	7.1%	7.7%	77.0%
TOTALS	$7,607,367	8.4%	8.9%	7.5%	75.2%

* Excludes Association Loans

Prepared by the Information Resources Management Division
based on Report RC 616, 03/31/87

Senator CONRAD. Seventy-five percent of the $7.6 billion. So we are talking nearly $6 billion?

Mr. CLARK. That is right.

Senator CONRAD. Nearly $6 billion is delinquent more than 3 years. Well, S. 1179 is certainly not, as your testimony would indicate, going to cost us $7.6 billion then. The fact is, you have lost the lion's share of that already.

Mr. CLARK. Of that $7.6 over $4 billion are emergency loans. And I remind you, Senator, a lot of that is tied in with current operating commitments we have today.

Senator CONRAD. Well, I just want the record to be immanently clear, immanently clear, this bill is no $7.6 billion giveaway as your testimony would indicate. The fact is 75 percent of that is already, as you have testified, 4 years or more delinquent.

Mr. CLARK. Three years or more.

Senator CONRAD. Three years or more. Well, we all know as creditors what that means. And further, S. 1179 would not require writedowns except in those cases where the Government loses less. That makes good business sense to me. Well, thank you for your testimony, and as Senator Melcher said, let me tell you what the strategy is around here. We intend to take this bill, and after the hearing and after debate, make it part of the credit package through amendments.

There is a growing agreement that the way to deal with the credit package, which is moving through, and to deal with this package, is to put them together. Senator Melcher, I think, made that clear. And that is the sense of many of us, that we need to move ahead with a package that deals with the credit question, not only in Farm Credit Services, but FmHA, and we are interested in coming out with a package that makes sense.

But we are very intent on having something that is a consistent policy, a clear and consistent and open policy, on writing down loans in those cases where it makes business sense for the Federal Government to do so, and will allow farmers out there to continue who, by continuing, will mean less of a loss to the FmHA as a creditor and mean that they continue a way of life. It makes not only moral sense, it makes business sense. Thank you, Mr. Clark.

Mr. CLARK. Thank you.

Senator CONRAD. We will also just ask to keep the record open for additional questions that other Senators might have.

Next we will have a panel that will include James Massey of the Farmers' Legal Action Group, Inc.; Gene Severens, the Center for Rural Affairs; the Honorable Sarah Vogel, the assistant attorney general, the State of North Dakota, and Ralph Paige, executive director of the Federation of Southern Cooperatives/Land Assistance Fund.

In this panel, we are going to hold Mr. Paige to the end because Senator Fowler of your State would like to be here. He is in another meeting until 11 o'clock, and if we are not able to have him here, we will just hold on and proceed with others, if that is okay with you, Mr. Paige.

Mr. PAIGE. Fine.

Senator CONRAD. Senator Fowler would very much like to be here for that. Welcome, glad to have you all here. This is a continuation of a series on FmHA. Mr. Massey, if you would want to give your statement, and then we will proceed with the others in agenda order, and then at the end we will have a time for questions. So if you want to proceed, Mr. Massey, we will start with you, then we will go to Eugene Severens and Sarah. If Senator Fowler is here by then, we will go to Mr. Paige. If not, we will go to the next panel and hold off. Please proceed, Jim.

STATEMENT OF JAMES T. MASSEY, EXECUTIVE DIRECTOR, FARMERS' LEGAL ACTION GROUP, INC., ST. PAUL, MN

Mr. MASSEY. Thank you very much, Mr. Chairman. My name is James Massey, and I am the executive director of the Farmers' Legal Action Group in St. Paul, MN. I am testifying here today at the invitation of the committee. I would like to thank the committee, and the chairman personally, for the invitation and the opportunity to appear here on behalf of my clients.

I represent the 274,000 FmHA borrowers to whom Mr. Clark loans money. As he indicated this morning, these borrowers are involved in a national class action lawsuit against FmHA which my friend from North Dakota, Sarah Vogel, filed in 1983, and handed off to me when she went into the public sector.

The lawsuit, *Coleman* v. *Lyng*, is now in its third generation in North Dakota before Judge Van Sickle. I would like to, if I may today, talk a little bit about what has happened in the case and what has spun off of that case that is directly related to the bill before the committee.

First, I am sorry Mr. Clark is not still here. I was prepared to come to this committee hearing today and testify that I have concluded that the Administration's refusal, its absolute, sustained, long-term refusal to enter into commercially reasonable debt restructuring and work out agreements as banks do is an ideologically driven policy of rural displacement.

Having heard Mr. Clark's testimony, I will simply yield to it and suggest that his testimony is the best evidence that my conclusion is accurate. I met with Mr. Clark in December 1986 along with a representative of our Attorney General's office and with our Commissioner of Agriculture from Minnesota. We posed the same questions to him then as the committee has today, following a series of meetings in Minnesota with farmers and Farmers Home personnel in which the issue of restructuring was discussed.

It is quite clear that the bottom line has been reached on this issue. The fact is that Farmers Home Administration's regulations allow broader and more flexible debt settlement or writeoff than Mr. Clark is willing to allow.

His testimony here and his verbal policy pronouncements about the country have had the effect of narrowing even the published regulation that has been on the books for quite some time.

Let me just say a couple of other things with respect to his testimony. I wish I had a couple of hours to do this because it would take at least that to do it justice. First, for him to suggest that the chairman and the Senator from South Dakota have identified and are fanning sparks of discontent that are localized, and in fact, that you have been beating the bushes to find them, is demagoguery of the worst kind.

My staff and I have been in 31 States in the last year and a half, every State represented on this committee with the exception of Vermont. We have met with farmers, ranchers, lawyers, clergy, farm credit counselors, public officials, school teachers, and others, and I want to say that this is no spark. It is a major brush fire. And that if anything, the kind of attention that this committee, that the chairman, Senator Daschle, and I believe my staff, have given to these problems serves to keep the flames down, to offer reasonable and viable alternatives and legitimate means of communicating discontent and dissatisfaction.

The day that we stop having these kinds of hearings, the day that we stop going out and listening, the day that I stop filing lawsuits on behalf of my clients, is the day that the crazy people, the right wing, if you will, extremists, the people that advocate violence, the people that are out there peddling offshore money, secret trusts, interest free loans, land patents and all the rest of that garbage, and at the same time peddling it with anti-Semitism and racism and other kinds of intolerance, is the day that we are really going to have a problem, the day that the sparks that are not brush fires and the brush fires that are brush fires will all turn into a conflagration that we are not going to have any ability to deal with.

Mr. Clark also suggested that this lawsuit that "has been reported in the press" is simply representative of a misunderstanding of their loan servicing policies. I disagree.

We have spent several thousand hours in this case doing a very close reading of FmHA regulations. We publish a book that interprets FmHA regulations for lay people that has sold 40,000 copies. I personally feel at least somewhat qualified to disagree with Mr. Clark about what the regulations say. The FmHA letter involved in the litigation tells an FmHA borrower that "FmHA intends to liquidate and foreclose on your loan and terminate your living and operating expense releases." This is step one of the liquidation process. For Mr. Clark to suggest that those 80,000 FmHA borrowers who received this letter are just sort of proceeding along hand-in-hand with the Government toward a mutual sort of accommodation in the normal course of things is, in my judgment, dissembling of the worst kind.

It is quite clear what the Government is doing. When FmHA came to court 10 days ago to urge Judge Van Sickle not to enjoin the Government from using a procedure that he had already declared unconstitutional on May 7, this is what they said:

"Your Honor, you must let us continue with these loan accelerations at the pace of 1,000 a month, and you must not set aside the 13,000 accelerations that we have already completed. If you do, the 13,000 deaccelerations will not allow us to strip $969 million out of the local communities economy that we are now taking right off the top and sticking into the Treasury.

"The additional 1,000 per month will not allow us to strip an additional $8 million a month out of those local communities and stick it into the Treasury. And if you enjoin us from selling our inventory property, as the plaintiffs have requested, so that the harmed farmers who have lost it illegally might have a shot at getting it back, it will cost us $20,000 per property per year to maintain that property in inventory."

I have heard recently people talking about the Farm Credit System having gotten off the track of its traditional mission. If that is the case, then the Farmers Home Administration is simply a major train wreck.

The litigation that we are involved in now,—to summarize—is essentially law enforcement work. Most of it comes out of the Food Security Act of 1985. We are suing to enforce the debt settlement provision in a case we filed recently in the district court in Minnesota. We are suing to enforce the income releases that Mr. Clark claims that they are making, and about which my clients have a different view.

We have filed another lawsuit attacking FmHA's complete assault on any notion of fair elections in implementation of the 1985 farm bill provision requiring county committee elections as opposed to appointments by the Secretary. We have found major technological violations in 45 of 57 election procedures in Minnesota. Borrowers have been excluded from running for the committee. No notice was given in many places. The national office told our State director that he did not have to publish the notice required in the Federal Register if he could not make the time and so on.

We are suing because the Government does not allow appeals as the statute requires from determinations on debt settlement. We are suing because the homestead and lease back programs do not work.

And finally, we are suing to enforce Minnesota's mediation law in which Farmers Home Administration stands alone among every creditor in our State thumbing its nose at the State legislature and saying we are not going to sit down at the table you have created to try to alleviate this crisis and provide a meaningful dialog between debtors and creditors.

In short, the bill before the committee is really a legislative version of much of what we have been trying to enforce in the courts in a very expensive and inefficient process. I think the bill would do a great deal to close the loopholes. I read the bill one more time on my way out here last night and said to myself, "maybe I should oppose this bill because if it passes I may not have anything to do but go fishing, which would be fine except that it might not put food on the table."

I think the bill is solid. It calls for reasoned business judgments, commercial judgments, by the Government in the principal part of the bill concerning debt settlement and restructuring. If the banks are doing it, it cannot be very crazy. Thank you, Mr. Chairman.

Senator CONRAD. Thank you. We would love to send you fishing.

Mr. MASSEY. I would love to go. I have not been yet this year.

Senator CONRAD. It is fascinating. You have just recounted almost every section of this bill as being the subject of a lawsuit.

Mr. MASSEY. I think every section is, with the exception of the council and the broadening of the eligibility standards to include tribal members. Everything else is the subject of litigation either in the national lawsuit in North Dakota or in two other lawsuits in Minnesota. Oh, one other exception is the guaranteed loan program. I can assure the committee that if the bill does not pass that will soon be the subject of litigation as well. The bankers do not want anything to do with it because, when it is time to get paid, they go to Farmers Home and all of a sudden they feel like a borrower and not a creditor. They end up spending a great deal of time and legal fees trying to collect on those guarantees.

I was in my home State of Oregon last week, out in Pendleton, OR, in wheat and ranch country. I was told there that the FmHA State director, Mr. Chen, has recently said that the farm crisis must be over in Oregon or never have gotten there because FmHA has all these millions of dollars of guaranteed loan authority that they just cannot loan. Nobody wants it apparently, and they cannot make any loans. I think there are two or three in the whole State.

If that is any indication from an empirical standpoint, at least in one State, I think that tells us how the guaranteed loan program is going.

Senator CONRAD. Thank you very much, Mr. Massey.

Mr. MASSEY. Thank you, Mr. Chairman.

[The prepared statement with attachments of Mr. Massey follows:]

TESTIMONY
OF
JAMES T. MASSEY

Before the Senate Committee on Agriculture, Nutrition, and Forestry

JUNE 9, 1987

My name is James T. Massey. I am an attorney in St. Paul, Minnesota, and am lead counsel in the national class action litigation Coleman v. Lyng. In that case, formerly Coleman v. Block, the plaintiffs challenge FmHA's liquidation and foreclosure proceedings in the United States District Court for North Dakota.

I am testifying today at the invitation of the Committee, and appreciate the opportunity to represent my clients in this forum.

Judge Bruce Van Sickle of the United States District Court for North Dakota held in an order on May 7, 1987, that the liquidation and foreclosure proceedings being used by FmHA were unconstitutional. Between November 1, 1985 and the judge's order, FmHA had issued some 78,000 notices to its borrowers across the country indicating that FmHA intended to liquidate or foreclose on their farms. In his May 7, 1987 order, the judge declared that the procedures used by the government caused a deprivation of a protected property interest without due process of law. On June 2, 1987, Judge Van Sickle issued an injunction temporarily halting further liquidations and foreclosures under these procedures for 13,000 borrowers across the nation and permanently halting them for the other 65,000. The judge ordered FmHA to change its procedures and to suspend any liquidation or collection activities until it does so.

These most recent rulings continue a line of court decisions that go back to 1983 in Coleman. Since that time, Judge Van Sickle has declared various aspects of FmHA's collection and liquidation procedures to be a violation of the Constitution and contrary to the intent and purposes of FmHA's enabling legislation. Indeed, in first order in 1983, he held that FmHA's refusal to implement a 1978 statute in which Congress authorized the Secretary to grant loan payment deferrals was a direct violation of the intent and purpose of that legislation.

The Coleman case symbolizes a much broader problem. Simply stated, the FmHA, under Secretaries Block and Lyng, has undertaken consistent and repeated attempts to undermine the very purposes that its loan programs were designed to serve. Congress has repeatedly stated that the intent of these programs is to assist low income, beginning and troubled farmers to get on the land and stay there. The administration has repeatedly ignored these purposes and has done everything within its power to eliminate a great number of FmHA borrowers. Several other examples make this clear.

In 1985, as part of the Food Security Act, Congress passed various amendments to the FmHA legislation. Attached as part of this testimony is an article written by my colleague, Lynn Hayes, and me, which outlines numerous ways in which FmHA has undermined the 1985 legislation. In short, where there has been an opportunity to continue to frustrate the purposes of Congress, this FmHA administration has done so.

The bill before the Committee today addresses many of the problems we have experienced. It requires FmHA to consider loans for debt settlement or write off when the debt is unsecured without forcing the farmer to liquidate all of the property and lose the farm as a condition of obtaining that debt settlement. It broadens and expands the protections of the dwelling retention and leaseback/buyback programs to assure that the former owners and operators of FmHA-financed farms have a fighting chance to qualify to retain some or all of their farms after they are taken into inventory by the government. The bill strengthens the FmHA appeal process and assures that FmHA borrowers will continue to receive releases of income sufficient to pay living and operating expenses throughout the course of their dealings with FmHA.

In short, this legislation addresses many issues that are currently pending before United States District Courts in Minnesota, North Dakota and elsewhere which seek to correct the directions of FmHA's administration in these programs. This legislation will benefit the more than 270,000 FmHA borrowers throughout the country and will be at least a step toward assuring compliance with the historical mandate and purposes of the FmHA legislation.

For the record and for the Committee's interest, I attach to this testimony a written testimony that was submitted earlier in the spring to this Committee, as well as the article mentioned above.

Again, I appreciate having had the opportunity to appear and testify before this Committee on behalf of my clients.

James T Massey

James T. Massey

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TESTIMONY
OF
JAMES T. MASSEY and LYNN A. HAYES

Subcommittee on Credit
of the
Senate Committee on Agriculture
Washington, DC
March 11, 1987

We submit this testimony in response to the Committee's invitation to appear to testify on April 28, 1987.

The Farmers Home Administration exhibits stunning contempt for its historical mission, and continuing disregard of the congressional will and mandate carried in FmHA programs. Proposed regulations published by the agency on January 15, 1987, along with several policy initiatives begun in the early 1980s and intensified in late 1985, threaten fully one-third of all FmHA borrowers with liquidation, and much of rural America with large-scale displacement and depopulation. On behalf of our clients throughout the country, we ask the Senate Agriculture Committee, and Congress as a whole, to take immediate legislative action to stop what can only be termed a radical departure by FmHA from its legal obligations. We respectfully request this Committee to conduct emergency, detailed, oversight hearings to gather direct testimony and evidence of the problems outlined in this summarized testimony.

Farmers' Legal Action Group, Inc. (FLAG) is a nonprofit organization that provides legal education, training and support to farmers and ranchers, their lawyers and advocates, and to public policy makers throughout the country. FLAG attorneys also undertake major, systemic litigation on behalf of farmers and ranchers. Executive Director James T. Massey and Attorney Lynn A. Hayes have been counsel to the national class of FmHA borrowers in Coleman v. Lyng (formerly Coleman v. Block) since 1985. Massey and FLAG attorney Juliet M. Tomkins also represent more than 10,000 Minnesota FmHA borrowers and over 100,000 Minnesota farmers in Hedge v. Lyng, a class action challenge to FmHA's implementation of county committee elections required in the 1985 Farm Bill.

FLAG staff attorneys have been assisting FmHA borrowers since 1982. James Massey was involved in the initial preparation of the Coleman v. Block case. In 1983, he and Hayes filed a companion case in Minnesota. Since 1983, Massey, Hayes and, in 1986, the remaining FLAG staff have provided education, training and direct legal support to thousands of FmHA borrowers across the country. They have delivered well over 100 lectures, workshops and seminars in over 30 states. Seventy-five such sessions have been held since June 1986, with total attendance of over 4,000 farmers, attorneys and community members. FLAG staff have taken hundreds of telephone calls during this period, and have written numerous books, articles and newsletters. Farmers' Guide to FmHA, written and edited by FLAG staff, has sold over 40,000 copies in three editions. FLAG's newsletter, Farmers' Legal Action Report, is distributed nationwide.

These combined experiences have generated an abundance of direct observation of FmHA practice and conduct. FLAG staff have learned firsthand from FmHA borrowers, attorneys, advocates, community and church leaders, agricultural extension agents and others just how FmHA is conducting its business.

It is--sadly--an ugly picture. Since 1981, FmHA has steadily, consciously and systemically ignored, refused to implement, misinterpreted, narrowed or otherwise undermined the programs it is charged with implementing--it has, for financially troubled farmers, become a government collection agency. This development raises a substantial and immediate policy question for this Committee: Should FmHA be returned to its roots as the lender of last resort, charged with assisting rural families and communities to continue a family farm system of agriculture; or should it, indeed, become a collection bureau for largely uncollectable debt, and a major farm liquidator? That choice is crystalized by the January 15, 1987 proposed regulations.

The January 15, 1987 proposed regulations suffer from myriad problems--some legal, some policy-based, some pragmatic. We submit for the record, attached to this testimony, our formal comments on those regulations. However, to fully understand the significance and potential impact of these proposed regulations, one must view them as part of a continuum of FmHA policy drift which began in 1981. In August 1978, Congress enacted the FmHA deferral statute which has been the subject of more than a score of federal lawsuits since 1981. Under that statute, the Secretary of Agriculture was authorized to defer loan payments, and forgo foreclosures, when circumstances beyond an FmHA borrower's control made it impossible for him/her to make all scheduled payments to the government without unduly impairing the farm family's standard of living. Secretary Block refused to implement the program; farmers and ranchers sued repeatedly, and the courts unanimously agreed that Congress intended the program to be enacted.

FmHA did not publish deferral regulations to implement the program nationally until November 1, 1985. During the seven-year period from August 1978 through November 1985, tens of thousands of FmHA borrowers went out of business. At the same time FmHA enacted the deferral regulations, it began a wholesale effort to collect delinquent debts from its borrowers. Since that time, FmHA has sent to nearly 90,000 FmHA borrowers--more than one-third of all FmHA borrowers--a series of notices informing them of the government's intent to foreclose on their farms. Buried in complex, contradictory and, at times, nearly incomprehensible language, FmHA has included skimpy information on deferral eligibility and how to apply.

The plaintiffs have mounted new legal challenges to this notice procedure claiming, among other things, that the notice procedure was adopted without compliance with the Administrative Procedure Act, that it is constitutionally inadequate, that it is unreadable to the average FmHA borrower, that it fails to provide the borrower with an adequate method for response, and that it does not comply with the statute or earlier court orders. To date, more than 12,000 of these 90,000 FmHA borrowers' accounts--13 percent--have been accelerated, and the farmer faces liquidation or foreclosure. And, of these 90,000, only 2,700--fewer than 3 percent--have been granted some form of deferral.

These grim statistics result directly from the FmHA policy embodied in the November 1, 1985 and subsequent regulations. In short, most FmHA borrowers are unable to qualify for deferrals because:

> 1. FmHA refuses to provide borrowers with an adequate notice of the deferral program, how to apply for it or what a borrower must demonstrate to qualify. Despite legislation--and direct evidence--that the agency procedures simply do not work, FmHA continues with a procedural approach designed for failure.
>
> 2. FmHA refuses to consider debt restructuring or settlement for continuing borrowers. Only those liquidated, or those who can pay off the government, are considered for any debt settlement.
>
> 3. FmHA bases future repayment assessments on the full amount of unrestructured debt--irrespective of appraised value of assets or the borrower's net worth situation. Today's low

commodity prices--projected to continue for several years--will not produce a cash flow to service this debt, inflated beyond reason by years of accrued interest at relatively high rates as FmHA stalled the deferral process.

4. FmHA requires all applicants for deferrals to demonstrate a positive cash flow after five years of deferral, without regard for the nature of the borrower's operation, the circumstances that got the borrower in trouble or the alternatives that might exist. For some borrowers, five years is too short a period--they simply need more time to put their houses back in order. For others, five years is too long--the remaining amortization period on loans after the deferral period crowds payments into such a short period that a positive cash flow cannot be shown. The point is, no single arbitrary time frame is necessary or appropriate to the implementation of the statute.

5. FmHA prohibits change or expansion of the farm operation during the deferral period. This prevents many borrowers from demonstrating a positive cash flow by prohibiting the flexibility that all farmers need to make adjustments to their operations during times of financial stress.

6. FmHA uses "crystal ball" figures for costs and prices which assume the worst and which the agency is completely unable to justify on an objective basis. The figures, taken together, make it virtually impossible for any FmHA borrower to demonstrate a positive cash flow.

7. FmHA evaluates farmers' "actual" production costs and yields during the several years prior to application, without regard for abnormal years of disaster, extremely high costs or low prices.

These are merely highlights; the regulations and FmHA procedures contain a great number of additional problems that render the deferral program virtually nonexistent.

The 1985 Farm Bill

In the 1985 Farm Bill (the Food Security Act of 1985), Congress again enacted several amendments to the Consolidated Farm and Rural Development Act that were designed to assist FmHA borrowers to continue farming; to resume farming if their operations were lost through liquidation, foreclosure or bankruptcy; or, at the least, to retain their rural homes and several acres if their farming operations could not be salvaged using other new or existing authority. FmHA, through regulation, instruction and policy, has savaged these amendments. For all practical purposes, these programs have been rendered unusable or unavailable to most financially troubled FmHA borrowers. The 1985 amendments and FmHA policy restrictions include:

> 1. **Debt Settlement.** The Secretary's authority to settle or compromise debt was expanded. Congress recognized that much of the existing delinquent FmHA debt was under- or uncollateralized, and that the government is certain to take a financial loss on that debt. In an effort to minimize the loss to the government, to avoid unnecessary legal proceedings and to head off wholesale displacement and depopulation, Congress acted to allow the Secretary to write off this uncollectable debt without foreclosing on tens of thousands of FmHA borrowers.
>
> The Secretary has turned this authority on its head. FmHA regulation and policy, taken together, require FmHA borrowers to liquidate their farm property or to pay in cash equal to the current value of the collateral securing that debt. Borrowers who could realistically demonstrate a positive cash flow, if the government used this authority as Congress intended, are nonetheless forced to choose between voluntary liquidation, foreclosure or bankruptcy instead. The direct, additional costs of this policy to the government alone--to say nothing of the policy and indirect social costs--make FmHA's position on debt settlement as fiscally impossible as it is devastating to rural families and communities.
>
> Finally, FmHA does not afford a notice of the opportunity for debt settlement, or instructions for applying, at any time during its active relationship with farm borrowers. Those few borrowers who learn of the procedure through their own means are frequently told that it does not exist, that the county supervisor cannot process an application or that they must wait until after they liquidate.

2. **Farmland Leaseback and Homestead Retention.** Congress enacted these provisions in 1985 to assist farmers to maintain their entire farms through leasebacks or with purchase options, or to retain at least their homes and several acres if loss of the farm operation became inevitable. FmHA has implemented these programs in a manner that defeats their purpose and undermines their utility.

With both programs, FmHA requires the farm family to lose the entire farm--through foreclosure, liquidation, conveyance or bankruptcy--before it will even consider eligibility for either. Thus, farmers by the thousands who wish to present a viable workout or settlement proposal to the government as an alternative to complete liquidation are not allowed to. Rather, they must take their chances on FmHA's later willingness to approve them for these programs--a chancy business in these hard times rife with hard feelings--or they must play "hard ball" through bankruptcy or other litigation and hope for a settlement or a forced workout.

It neither case is the congressional objective satisfied. FmHA could implement an orderly process of notifying and considering borrowers for these programs as part of the loan servicing process, but it has chosen rather to collect and liquidate--notice of these programs is given only as an afterthought. Farm families who have no operations, no income and absolutely no assets left can scarcely be expected to show the ability to even pay on a lease, let alone demonstrate that they have a viable farming operation, as FmHA requires for the leaseback program. As a result of these limitations, few farmers will ever qualify for either of these 1985 programs.

3. Appeals. In 1985, Congress required FmHA to implement an administrative appeal procedure for borrowers who were affected by FmHA "adverse actions". FmHA has arbitrarily insulated many of its decisions from the appeal process, in direct violation of this provisions of the 1985 Farm Bill. Appraisal disputes, denials of debt settlement and determination of lease terms for leaseback applications are but three of these exclusions.

4. **Release of Income.** Congress learned in 1985 that FmHA intended to repeal its regulations interpreted in Coleman v. Block to require release of necessary family living and farm operating expenses from borrowers' production proceeds. In short, FmHA sought a further means of "starving" FmHA borrowers off their farms by choking off funds necessary to basic survival. The Secretary was charged in the statute to determine a scheme of "essential" operating expenses.

The Secretary has refused to adopt regulations defining or properly implementing this section. Despite litigation in Coleman and repeated requests from our clients to adopt an objective list of "essentials", the Secretary has left it up to FmHA line staff to determine what expenses are "essential" by defining them as "basic, crucial or indispensable". FmHA personnel, with this skimpy guidance, have denied releases for feed, seed, property taxes, church offertories, medical supplies and treatment, IRS employment taxes, payments to short-term "Main Street" creditors, payments on mortgages or land sale contracts, livestock replacement and literally the entire range of other normally incurred household and farm operating expenses. In spite of this--and with this knowledge--FmHA steadfastly refuses to detail further the requirements of the statute. Farmers are again being starved off their farms.

5. **County Committee Elections.** Congress required two of the three county committee members to be elected by farmers in the community, rather than allowing all three members to be appointed by the Secretary. The FmHA county committee is crucial; its members make all loan eligibility decisions, and they recommend actions on loan servicing, debt settlement and other procedures. Against a backdrop of political cronyism, race discrimination and systemic manipulation of committee members by FmHA personnel, Congress demanded fairness, accountability and independence in the county committee dealings.

FmHA responded by ruling all FmHA borrowers--and their spouses and children--ineligible to serve on the committee. It allowed only five days for nomination--two of which were on a weekend. It failed to publish its election regulations for notice and comment in the Federal Register, and

> declared that any "politically active" farmers could not run for the office. FmHA failed to post or run in newspapers the required advertisements of the elections in some counties and, in others, its personnel asserted that farm wives not enrolled on ASCS lists were not "farmers". In short, FmHA stripped the county committee election process of any viability by substantively and procedurally blocking an open and fair election. Litigation, first initiated by FLAG, has been filed on these issues in Minnesota, Iowa, and North Carolina.

This overview of FmHA's treatment of the 1985 Farm Bill is not exhaustive; it contains only the most substantial problems.

The Proposed Regulations

Moving on the continuum, we turn to the January 15, 1987 proposed regulations. These regulations--nearly 100 pages of radical revamping of FmHA programs and procedures--contain the nails that will hammer closed the coffin that has been crafted for FmHA borrowers over the earlier years of this continuum. A full and complete copy of our comments is attached to this testimony. The Committee is asked to note that we also join in the comments of the Attorneys General of the States of Minnesota, Iowa, Illinois, and North Dakota, and in the comments of the Center for Rural Affairs of Walthill, Nebraska, all of which have been submitted to this Committee.

The highlights of our concerns are:

1. **Pre-Application Ratios.** FmHA proposes to assess would-be FmHA applicants with a rigid ratio analysis. This could result in fully one-half of all FmHA borrowers becoming ineligible by definition for future FmHA loans. The proposal violates the 1985 Farm Bill appeal statute by making ratio calculations unappealable. The regulations are contradictory and confusing, and they will create more disruption and chaos in local offices.

2. **Appraisals.** FmHA seeks to delete its appraisal regulations from the Federal Register. This violates federal law, and plunges the agency deeper into furtive secrecy certain to heighten borrower disenfranchisement.

3. **Appeals.** FmHA seeks to preclude from subsequent appeals any FmHA borrower who forgets to bring certain materials--or does not understand what to bring--to loan servicing meetings with county personnel. This proposal violates the appeal provision of the 1985 Farm Bill and will contribute further to borrower hostility and disenfranchisement.

4. **County Committee.** FmHA proposes to allow its own personnel to "appeal" from favorable county committee certifications. This is not authorized anywhere in the statutes, and is a direct assault on the independence of the committee sought by Congress in the 1985 Farm Bill.

5. **Conservation Easement Program.** FmHA proposes to consider borrowers for the CEP program only after considering other loan servicing options, rather than with other servicing actions. The proposed regulations do not contain any provisions for adequately notifying borrowers of their right to apply for the CEP.

6. **Planning of Expenses.** The proposed regulations require expense planning far in advance of what is possible for most farmers, and condition release of sales proceeds on these plans.

7. **Reserves.** The proposed regulations require borrowers to plan for--and show as expenses--reserves for two years of taxes and adequate "capital reserves". This is simply impossible for many financially troubled FmHA borrowers. (It is also ironic in light of FmHA's refusal to allow release of income for property tax payments.)

8. **Surplus Commodities.** Contrary to assurances it gave Congress, FmHA seeks to venture into the commodity program business through limitation of its loans. This practice is in excess of its statutory authority and is outside the agency's historical mission.

9. **Disaster Year Data.** The proposed regulations require FmHA officials to include expenses and production from disaster years, as well as from normal years, in determining the feasibility of FmHA loan applications. This rule

will foreclose farmers in whole sections of the county--and whole regions of some states--from being able to qualify for FmHA loans.

10. **No Loan Servicing Notice.** The proposed regulations do not contain adequate or timely notices of loan servicing options. Borrowers will continue to be held in the dark about their options. Under the proposed regulations, FmHA would stop taking loan applications when funds were unavailable. This would wholly disrupt the "first come, first served" process now in place, and would leave many farmers completely in the dark about their potential options. It would also result in chaos once funds become available.

11. **Set-Offs.** USDA has begun aggressively using set-offs within the agency to obtain payments on delinquent FmHA loans. Under this procedure, FmHA seizes, for example, advance deficiency payments and applies them directly to borrowers' loan accounts. These set-offs rob many farmers of their last source of living and operating funds, and they are tantamount to a foreclosure by starvation.

12. **Inventory Property.** The proposed regulations would allow FmHA to classify as "surplus" and dispose of inventory property as "unsuitable" after only one year. This property could then be sold to non-FmHA eligible borrowers. The proposed regulation violates a federal statute that requires a three-year holding period, threatens a premature "dumping" of land that will further depress real estate values, and shifts FmHA's land disposition from its historical clients to larger farmers, speculators or corporate concerns.

These, again, are merely highlights.

In conclusion, we respectfully repeat our request that this Committee hold emergency, detailed, oversight hearings to inquire into FmHA's conduct udner its enabling legislation. Time is short--90,000 of FmHA's 270,000 borrowers are at risk. Left unchecked, FmHA shows every indication that its policy direction will continue to be collection--or an attempt at collection--at any price. This is a question for Congress--not the agency--because it goes to the core of FmHA program purposes.

Thank you for the opportunity to appear and testify on behalf of our clients. We stand ready to assist the Committee in any way we can.

Respectfully submitted,

FARMERS' LEGAL ACTION GROUP, INC.

James T Massey
James T. Massey
Executive Director

Lynn A Hayes
Lynn A. Hayes
Attorney at Law

FmHA HINDERS USE OF 1985 FARM BILL PROTECTIONS©

by Lynn Hayes and James Massey

The 1985 Farm Bill[1] included several provisions that added or strengthened FmHA programs designed to assist financially distressed farmers.[2]

The "dwelling retention" and "farm/ranch land retention" programs both created in the Farm Bill give FmHA borrowers the opportunity to lease and/or purchase some or all of their farm property back from FmHA after liquidation or foreclosure. The "debt settlement" program, strengthened in the Farm Bill, allows FmHA to reduce or write off some debt.

Each of these programs offer FmHA borrowers new opportunities for debt restructuring, preservation of the farm, or a chance to "start over". However, strict eligibility requirements and FmHA's handling of the programs have made them virtually unavailable to many borrowers.

Dwelling Retention Program

FmHA's new dwelling retention program[3] allows farmers and ranchers who lose their homes to FmHA to lease back the homes and up to five adjoining acres from FmHA. The available lease period is from three to five years, and can be written with an option to

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[1] Food Security Act of 1985, Pub. L. No. 99-198, 99 Stat. 1354 (1985).

[2] The 1985 Farm Bill contains several provisions that relate to the Farmers Home Administration loan programs. Three of those provisions are discussed in this article.

[3] Food Security Act of 1985, Pub. L. No. 99-198 § 1321, 99 Stat. 1354, 1532-34 (1985).

buy back the home and adjoining acreage. The lease payment must be comparable to other property in the area, and the option price based on an independent appraisal. FmHA is also authorized to finance the repurchase.

Under the new dwelling retention program, every FmHA farmer program borrower whose home ends up in FmHA inventory as a result of a foreclosure by FmHA, voluntary conveyance to FmHA, or as a result of a bankruptcy proceeding must be notified of their right to be considered for dwelling retention before FmHA can lease or sell the property to anyone else. If FmHA has acquired the property as a result of a foreclosure brought by someone other than FmHA, the property is not eligible for dwelling retention.

There are several things borrowers must show to be eligible for dwelling retention. They must:

1. Occupy the home and own no other suitable housing;
2. Have had a gross annual farm income of at least $40,000 in two of the five calendar years ending December 31, 1985;
3. Have received at least 60 percent of the gross family income from farming or ranching in two of the five calendar years ending December 31, 1985;
4. Have occupied the home and engaged in farming or ranching for the five-year period ending December 31, 1985;
5. Be personally liable on the FmHA loan;
6. Have exhausted all remedies for restructuring FmHA debt;

7. Have been released from liability on the FmHA debt through bankruptcy or FmHA debt settlement;

8. Have sufficient income to make the rental payment on the home and adjoining acreage.

These eligibility requirements are very hard to meet for many FmHA borrowers. Some have had little farm income for years--in some cases because FmHA has denied credit or loan servicing. Others, especially farmers in the southeastern states, are too small to qualify. Still others have not been released from liability because FmHA has not told them about the debt settlement program.

However, these requirements are in the law. In submitting applications for homestead retention, borrowers and their advocates should be very careful to address all of the requirements.

Any farmer who applies to lease his or her home back under this program and is denied, has the right to appeal FmHA's decision. If an appeal is filed, FmHA may not rent or sell the property to anyone else until the appeal is concluded.

"Farm/Ranch Land Retention" Program

The second new FmHA program designed to assist farmers/ranchers who have lost their land provides for the leaseback with an option to purchase the entire farm or ranch.[4] Borrowers whose land ends up in FmHA's inventory must be notified of the right to apply to lease the property back before FmHA may rent or sell it to anyone else. The lease can be made with an option to purchase. As long as the farm/ranch was a "family-size" farm, the lease should cover the entire property.

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[4] Food Security Act of 1985, Pub. L. No. 99-198, § 1314 (1985); 99 Stat. 526-28; 51 Fed. Reg. 13477-13479, April 21, 1986.

FmHA will normally grant only a one-year lease under this program; however, leases may be made for up to three years. Farmers/ranchers who have no real prospect of purchasing the property at the end of a one-year lease should request a three-year lease with option to buy.

To be eligible for this program, a farmer/rancher must have sufficient experience, management skills, and financial resources to make the farming/ranching operation work. The FmHA county supervisor must look at past financial and production records to determine if the previous operation failed due to circumstances beyond the borrower's control. These circumstances could include such things as natural disasters, livestock disease, high interest rates, and farm commodity prices that were below cost of production.

The lease price must reflect the average annual income that can be made from farming/ranching the property. This is called the "capitalization value".

If FmHA denies the lease application, the farmer/rancher has a right to appeal. If an appeal is requested, FmHA cannot sell or lease the property to anyone else until the entire appeal procedure is concluded.

Debt Settlement

A third provision in the 1985 Farm Bill expanded FmHA's authority to compromise, adjust, or reduce debt.[5] For years, FmHA has had the authority to compromise, adjust, charge-off, and cancel debt.[6] However, it has been the agency's policy to use this authority only after all of the borrower's property has been liquidated.

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[5] Food Security Act of 1985, Pub. L. No. 99-198, § 1309, 99 Stat. 1354, 1523 (1985). Proposed new regulations were published July 3, 1986. They had not been finalized when this publication went to press.

[6] 7 C.F.R. Part 1864.

The legislative history regarding the new debt settlement provisions suggests that Congress intended FmHA to enter into "workout" agreements **before** liquidation and foreclosure. The proposed regulations of July 3, 1986 do not substantially change or expand the debt settlement authorities and still seem to require **prior** liquidation. Whether FmHA's policies on debt settlement will change with the final regulations remains to be seen.

FmHA Hinders Programs

The dwelling retention, farmland retention, and debt settlement programs could easily be very beneficial to borrowers who are threatened with the loss of their land, equipment, livestock, and crops.

However, FmHA regulatory procedures and policies prevent borrowers from obtaining "workout" agreements that reflect this authority. FmHA will not make any commitments on the terms of dwelling retention, farmland retention, or debt settlement until after the chattels have been liquidated and real property is in FmHA inventory. These procedures prevent borrowers from negotiating "workout" agreements with FmHA "up front". This forces borrowers to fight FmHA adverse actions all the way through the administrative appeal process and possibly into the judicial arena.

Many borrowers who attend loan servicing conferences with their county supervisors are advised that loan servicing will not work. Then they are advised that if they voluntarily convey the property to FmHA, they can get dwelling retention, farmland retention, and debt settlement. **No borrower should convey property to FmHA voluntarily in hopes of obtaining such relief.** Borrowers should continue with the appeals of loan servicing denials. **Failure to do so may make them ineligible for dwelling retention and debt settlement.**

If borrowers wish to voluntarily convey property, they should **insist** on getting agreements, including lease terms and option prices for dwelling retention and family farmland retention, in **writing prior** to any conveyance. Any debt settlement agreements should also be in writing prior to conveyance. The writing must be signed by the FmHA official who has the authority to make that agreement. In most cases, this will **not** be the county supervisor. Usually, either state director or national administrator approval must be obtained on any debt settlement agreements.

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MEMORANDUM

TO: ADVOCATES, FARM GROUPS, HOTLINES, AND OTHERS GIVING ADVICE TO FmHA FARM PROGRAM BORROWERS

FROM: LYNN A. HAYES and JAMES T. MASSEY

DATE: June 5, 1987

RE: **RECENT DECISIONS IN THE COLEMAN v. LYNG NATIONAL CLASS ACTION LAWSUIT**

Enclosed is a packet of informational materials that should help you in advising FmHA farmer program borrowers. The packet includes:

1. A memorandum in question and answer form that explains the Coleman decisions;
2. A press release;
3. A copy of the important parts of the May 7, 1987 Coleman decision; and
4. A copy of the June 2, 1987 Coleman decision.

For your information, we have set up a telephone number **(612/223-5403)** in our office to handle calls from advocates, farmers, and attorneys who need additional information about the Coleman decisions. We would appreciate it if you would simply provide copies of the question and answer form to all farmers who did not receive the "Notice of Acceleration" before May 7, 1987. Farmers who were accelerated prior to May 7, 1987 should call the telephone number above, or have you call on their behalf, so that we can keep track of the 13,000 to 14,000 who received those acceleration notices.

We will have a law clerk answering that line. She is trained to answer questions about the Coleman decisions. Anything that goes beyond the decisions themselves she probably will not be able to answer. If you need additional information that the law clerk cannot provide, please ask her to give one of our attorneys a message.

We are now discussing legal strategy to deal with the 14,000 people who were accelerated prior to May 7, 1987. We may be asking the court to extend further protections to those 14,000 people, or to at least require FmHA to send them a notice of the court's decisions. We also hope to eventually put together a packet of sample pleadings that attorneys can use when filing individual lawsuits or defending against foreclosure on behalf of these 14,000 borrowers. We will do the best we can to keep you informed of our strategies and what materials will be available.

We would appreciate anything you can do to assist in getting the question and answer form to as many FmHA borrowers as possible.

/acp
Enclosures

FARMERS' LEGAL ACTION GROUP, INC.

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COURT ORDER HALTS FARM FORECLOSURES BY FmHA

June 5, 1987

A major court decision halting farm foreclosures and liquidations by the Farmers Home Administration (FmHA) was issued on June 2, 1987. The decision affects over 65,000 farmers across the country.

United States District Court Judge Bruce M. Van Sickle of North Dakota issued the decision in the Coleman v. Lyng national class action lawsuit. Farmers' Legal Action Group, Inc. of St. Paul, Minnesota, attorneys for the farmers, filed a challenge in December 1985 to the "Notice of Intent to Take Adverse Action", which is used to advise farmers that FmHA intends to foreclose. On May 7, 1987, Judge Van Sickle declared that the challenged notice procedure was unconstitutional because it did not give farmers enough information or an adequate opportunity to apply for the FmHA programs available to prevent foreclosure. He also ordered FmHA to revise its notice forms.

The following is a set of answers to many commonly asked questions about the court decisions. Determine which of the categories described below you are in, and then read the section that pertains to your category and the miscellaneous questions section at the end.

Who is affected by the court decisions?

There are between 65,000 and 80,000 FmHA farmer borrowers affected by the court's decisions. Not all of these farmers are affected in the same way. Those affected fall into three categories. Those categories are:

Category #1:

Farmers who received the "Notice of Intent to Take Adverse Action" but did not receive the "Notice of Acceleration".

Category #2:

Farmers who received the "Notice of Intent to Take Adverse Action" and a "Notice of Acceleration" on May 7, 1987, or between May 7, 1987 and June 2, 1987.

Category #3:

Farmers who received the "Notice of Intent to Take Adverse Action" and a "Notice of Acceleration" before May 7, 1987.

What is the "Notice of Intent to Take Adverse Action"?

The "Notice of Intent to Take Adverse Action" set of forms includes the following:

1. "Notice of Intent to Take Adverse Action", Form FmHA 1924-25;
2. "Borrower Acknowledgement of Notice of Intent to Take Adverse Action", Form FmHA 1924-26;
3. "Notice--Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities", Form FmHA 1924-14.

These forms notified borrowers that FmHA intended to foreclose and liquidate their loans and terminate all releases of production income. The farmers who received the forms were required to respond within 30 days on the "Borrower Acknowledgement of Notice of Intent to Take Adverse Action".

What is the "Notice of Acceleration"?

The "Notice of Acceleration" is the letter that FmHA sent to borrowers advising them that their entire debt was immediately due and payable. The letter gave the farmer 30 days to pay the entire amount of the indebtedness or FmHA would take action to foreclose and liquidate property in which they had a security interest. The "Notice of Acceleration" may have been described at the top of the letter as "Notice of Acceleration of Your Debt to the Farmers Home Administration and Demand for Payment of That Debt". Once a "Notice of Acceleration" is sent, FmHA will stop all releases of farm production income and may take the farmer's ASCS payments.

CATEGORY #1 QUESTIONS

What is FmHA prohibited from doing to farmers who are in Category #1?

FmHA cannot:

1. Accelerate loan accounts;
2. Start liquidation actions; or
3. Start foreclosure actions

until it sends the Category #1 farmer a corrected set of the "Notice of Intent to Take Adverse Action" forms and makes the services listed on those forms available to the farmer.

What should Category #1 farmers do if they have meetings or appeal hearings scheduled with FmHA that are related to the defective "Notice of Intent to Take Adverse Action"?

The June 2, 1987 court decision says that all procedures taken after the defective notices were sent to Category #1 farmers are void. However, many farmers in Category #1 are still waiting for FmHA to finalize processing of their cases under the "Notice of Intent to Take Adverse Action", and have meetings, servicing conferences, and appeal hearings already scheduled. These farmers should write a letter to their local FmHA office asking it to cancel the meeting, servicing conference, or appeal hearing, as required by the June 2, 1987 decision in Coleman v. Lyng. In that letter, the farmer should ask FmHA to let the farmer know if the meeting, servicing conference, or appeal hearing will be cancelled.

What should Category #1 farmers do when they receive the corrected "Notice of Intent to Take Adverse Action" forms?

As soon as the Category #1 farmers receive the corrected "Notice of Intent to Take Adverse Action" forms, they should immediately write a letter to FmHA requesting the additional information that will be available in the FmHA offices regarding the various options listed on the "Borrower Acknowledgement of Notice of Intent to Take Adverse Action". This is very important, because the Coleman court has ordered FmHA to write detailed descriptions of all of the options, including the eligibility criteria, terms, restrictions, benefits, and the effect of choosing one option over another. All farmers should have this information when they complete the new "Borrower Acknowledgement of Notice of Intent to Take Adverse Action".

Can borrowers in Category #1 still get their crop and livestock sales checks released to pay essential living and operating expenses?

Yes. Because Category #1 farmers have not yet had their loans accelerated, they are still entitled to releases of their farm production income to pay their essential living and operating expenses. FmHA must release its security interest in farm production income needed to pay essential living and operating expenses to these farmers until it accelerates their loans. It cannot accelerate a Category #1 farmer's loans until after the corrected set of "Notice of Intent to Take Adverse Action" forms are sent to the farmer and the farmer has the opportunity to apply for the services listed on those forms.

Can FmHA take Category #1 farmers' ASCS payments?

FmHA may not take Category #1 farmers' ASCS payments unless it has a security interest in those payments. This means that FmHA cannot take ASCS payments by administrative offsets from these farmers. Administrative offsets cannot be taken until after the farmer's accounts are accelerated.

CATEGORY #2 QUESTIONS

What must FmHA do for farmers in Category #2?

FmHA must withdraw the "Notices of Acceleration" that were sent to farmers in Category #2. FmHA also cannot:

1. Accelerate loan accounts;
2. Start liquidation actions; or
3. Start foreclosure actions

until it sends the farmer a corrected set of "Notice of Intent to Take Adverse Action" forms, and makes the services listed on those forms available to the farmer.

What should Category #2 farmers do when they receive the corrected "Notice of Intent to Take Adverse Action" forms?

As soon as the Category #2 farmers receive the corrected "Notice of Intent to Take Adverse Action" forms, they should immediately write a letter to FmHA requesting the additional information that will be available in the FmHA offices regarding the various options listed on the corrected "Borrower Acknowledgement of Notice of Intent to Take Adverse Action". This is very important, because the Coleman court has ordered FmHA to write detailed descriptions of all of the options, including the eligibility criteria, terms, restrictions, benefits, and the effect of choosing one option over another. All farmers should have this information when they complete the new "Borrower Acknowledgement of Notice of Intent to Take Adverse Action".

What should a Category #2 farmer do if he/she needs releases of crop or livestock sales checks to pay essential living and operating expenses?

A Category #2 farmer should write a letter to FmHA if he/she wants FmHA to release farm production income so that essential living and operating expenses can be paid. The letter should ask FmHA to immediately withdraw the "Notice of Acceleration", as required by the June 2, 1987 court decision in Coleman v. Lyng. In that letter, the farmer should also explain what checks he/she wants released and what essential living and operating expenses will be paid with that money.

What should a Category #2 farmer do if he/she is expecting some payments from ASCS?

A Category #2 farmer who is expecting payments from ASCS should write a letter to FmHA asking that it immediately withdraw the "Notice of Acceleration", as required by the June 2, 1987 court decision in Coleman v. Lyng. If FmHA has already notified the farmer that it will take the ASCS check, the letter should also ask FmHA to immediately withdraw that notice and not take the ASCS check.

What can Category #2 farmers do if FmHA has taken farm production income that was needed for essential living and operating expenses, or has taken ASCS payments by administrative offset after it sent the "Notice of Acceleration"?

If, after sending the "Notice of Acceleration", FmHA took farm production income that the farmer needed to pay essential family living or farm operating expenses, or took by administrative offset ASCS payments owed to the farmer, the farmer should immediately contact an attorney. The only way to get back the money that FmHA took after it sent the "Notice of Acceleration" is to file a lawsuit against FmHA in the farmer's local federal court.

CATEGORY #3 QUESTIONS

What is FmHA prohibited from doing to farmers in Category #3?

FmHA cannot:

1. Start foreclosure proceedings; or
2. Proceed with existing foreclosure actions

until 30 days after the court determines that the corrected "Notice of Intent to Take Adverse Action" forms and explanations are available in the FmHA offices.

When will the corrected forms be available in FmHA county offices?

No one knows exactly when the forms will be available in the county offices. In the court's May 7, 1987 order, FmHA was required to submit new forms and complete explanations of all of the services listed on the forms by June 9, 1987. The attorneys for the farmers in the Coleman case have 20 days to comment on what FmHA submits. It is very likely that the corrected forms will not be in the FmHA county offices any earlier than the end of June, 1987.

What should farmers in Category #3 do to protect themselves from foreclosure and liquidation?

Farmers in Category #3 should immediately contact an attorney if they want to try to protect their farm property from foreclosure or liquidation by FmHA. The reason the court said that FmHA could not continue with foreclosures right away was to allow these farmers to find attorneys to review their cases. Farmers in Category #3 probably have a defense to foreclosure or liquidation based on the court's May 7, 1987 order, which says that the notices that FmHA sent were unconstitutional. Category #3 farmers must bring their own individual lawsuits against FmHA in their local federal courts based on the Coleman court's orders.

Can FmHA take Category #3 farmers' farm production income even if it is needed for essential living and operating expenses?

Yes. Category #3 farmers have been accelerated. The court said that FmHA did not have to withdraw the "Notices of Acceleration" that were sent to Category #3 farmers. Since those farmers' loans are accelerated, FmHA will not release the farmers' crop or livestock sales checks in which it has a security interest.

Can FmHA take Category #3 farmers' ASCS payments by administrative offset?

> Yes. FmHA can take Category #3 farmers' ASCS payments by administrative offset because the farmers' accounts have been accelerated. However, FmHA administrative offset regulations do provide some defenses that a farmer may be able to use to protect his/her ASCS payments.

Is there anything that Category #3 farmers can do to get FmHA to release farm production income for payment of essential living and operating expenses or to keep FmHA from taking ASCS payments?

> Farmers in Category #3 who need farm production income to pay essential living and operating expenses or who want to keep FmHA from taking ASCS payments should immediately contact an attorney. To force FmHA to release farm production income or ASCS payments, Category #3 farmers will have to file their own individual lawsuits in their local federal courts. The May 7, 1987 decision in the Coleman case, which held that the FmHA notice forms were unconstitutional, may give Category #3 farmers a claim on which to base a lawsuit against FmHA.
>
> Any Category #3 borrower or attorneys considering legal action under Judge Van Sickle's Orders may call (612) 223-5403, or write the Farmers' Legal Action Group at the above address for additional information.

MISCELLANEOUS QUESTIONS

What can farmers do whose land or chattel property has been sold?

> Farmers who received the unconstitutional "Notice of Intent to Take Adverse Action" forms and whose land or chattel property has been sold should contact an attorney to determine whether they can sue FmHA for money damages to compensate them for the loss of their property. These farmers will have to file their own individual lawsuits in their local federal courts. The decisions in Coleman may provide a basis for such lawsuits.

What should farmers do who received the defective "Notice of Intent to Take Adverse Action" or the "Notice of Acceleration" after June 2, 1987?

> The Coleman court did not tell FmHA what it must do about farmers who receive the defective "Notice of Intent to Take Adverse Action" or the "Notice of Acceleration" after June 2, 1987 in either the May 7, 1987 or the June 2, 1987

decisions. However, it is quite clear that the court intended that no defective "Notices of Intent to Take Adverse Action" or "Notices of Acceleration" be sent after its June 2, 1987 order. In addition, Vance Clark, the national Administrator of the Farmers Home Administration, issued a letter by electronic mail on May 18, 1987 that told FmHA offices that no "Notices of Intent to Take Adverse Action" or "Notices of Acceleration" were to be sent until after July 6, 1987 or until after they received further notice from the national office. Farmers who received either notice after June 2, 1987 should immediately write a letter to their local FmHA offices and ask that the notices be withdrawn immediately, as required by the May 18, 1987 letter from Vance Clark.

Why did the Coleman court decide that the "Notice of Intent to Take Adverse Action" forms were unconstitutional?

In its May 7, 1987 order, the court held that the "Borrower Acknowledgement" form was unconstitutional. The "Borrower Acknowledgement" is the form that farmers were required to fill out by choosing one of four options. The court said that this form was unconstitutional for three reasons:

1. Because farmers were allowed only one method to respond, farmers who had received notices that listed more than one reason for FmHA's decision to take adverse action could not appropriately respond;
2. Because farmers were allowed to choose only one method to respond, they were unable to appropriately respond if more than one loan was affected by the notices; and
3. The local FmHA offices did not have adequate information available to give to farmers regarding the eligibility criteria, terms, restrictions, and benefits of the various options on the "Borrower Acknowledgement" form and the effect of choosing one option over another.

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FOR IMMEDIATE
PRESS RELEASE
June 3, 1987

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COURT ORDER HALTS FARM FORECLOSURES BY FmHA

A major Court Decision halting farm foreclosures and liquidations by the Farmers' Home Administration (FmHA) was issued on June 2, 1987. The Decision affects over 65,000 farmers across the country.

U.S. District Court Judge Bruce M. Van Sickle of North Dakota issued the Decision in the Coleman v. Lyng national class action lawsuit. The Farmers' Legal Action Group, Inc., of Saint Paul, Minnesota, attorneys for the farmers, filed a challenge in December 1985 to the "Notice of Intent to Take Adverse Action" used to advise farmers that FmHA intended to foreclose. On May 7, 1987, Judge Van Sickle declared that the challenged notice procedure was unconstitutional because it did not give farmers enough information or an adequate opportunity to apply for the FmHA programs available to prevent foreclosure. He also ordered FmHA to revise its notice form.

The June 2, 1987, Court Decision was issued to advise FmHA the actions it was required to take to protect the 65,000 farmers who had received the unconstitutional notice.

There are three groups of FmHA farmer borrowers affected by the Order. First, the Court's Order stops FmHA from foreclosing or liquidating loans of farmers who had received the notice but whose loans were not accelerated before May 7, 1987. Under the Court's Order, FmHA may not accelerate these farmers' loans unless it starts the procedure over with a new notice. To accelerate a loan, FmHA must have sent the farmer a Notice of Acceleration which states that the entire debt is immediately due and payable.

Second, the Order requires FmHA to de-accelerate those accounts which accelerated between May 7, 1987, and June 2, 1987. FmHA must also send these farmers a revised notice before it can foreclose and liquidate their accounts.

Third, the Order also stops FmHA for at least 30 days from starting or continuing any foreclosure or repossession actions against farmers who had received the notice and whose accounts were accelerated before May 7, 1987. This 30-day period was granted to allow farmers time to decide whether they should defend against FmHA's foreclosure actions based on the unconstitutional form. These farmers should immediately seek legal counsel or call the Farmers' Legal Action Group, Inc., at (612) 223-5403 for further advice.

While the Court Order does not permanently halt foreclosure and liquidation actions by FmHA, it does give tens of thousands of farmers an opportunity to apply for all of the loan servicing and restructuring programs available which may make foreclosure actions unnecessary.

FILED
MAY - 7 1987
2:08 pm
EDWARD J. KLECKER, CLERK
U.S. DISTRICT COURT-NORTH DAKOTA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Dwight Coleman et. al.,
Plaintiffs,
v.
Richard E. Lyng, Secretary of Agriculture, et. al.,
Defendants.

A1-83-47
Memorandum and Order

EXCERPT OF OPINION ISSUED MAY 7TH, 1987

In their tenth claim for relief, plaintiffs assert that forms FmHA 1924-14, 1924-25, and 1924-26 do not meet the due process requirement of the fifth amendment. Copies of these three forms are attached to this order as an appendix. Notice of the impending governmental deprivation and the opportunity for a hearing on the deprivation is an essential element of due process. Goss v. Lopez, 419 U.S. 565, 579 (1975). The timing and content of the notice depends on the competing interests involved in a particular case. Id. The notice given must inform interested parties of the hearing availiable to them, and enable them to adequately prepare for it. Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 14 (1978). The form and content of the notice "must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." Mullane v. Central

Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950).

Two countervailing factors must be considered in tailoring the due process notice to the circumstances of the present case. First, FmHA borrowers have available to them a number of provisions or programs intended to help see them through crises involving their loans. These options are bewildering both in number and complexity. Second, it has been asserted without contradiction that some seventy percent of FmHA borrowers have a twelfth grade education or less. Any notice will have to strike a reasonable balance between providing complete notice of the options available and ensuring that the notice given can be read and understood by its intended recipients.

Generally, the three FmHA forms embody a reasonable compromise of these two competing goals. Plaintiffs, however, have raised numerous objections to the forms. These objections will not be individually reviewed. The various assertions that the forms are in violation of this court's permanent injunction in this case do not address their constitutionality. The proper vehicle for these allegations would be a motion to have defendants held in contempt. This court neither encourages nor discourages the bringing of such a motion.

The various assertions that passages of the forms are difficult to comprehend have some merit, but this court is satisfied that the difficulty does not rise to the level of a constitutional violation. On the other hand, the "improvements" plaintiffs assert are constitutionally essential would greatly detract from the comprehensibility of the forms. For example, form FmHA 1924-14 is criticized in part as follows:

> It fails to adequately describe the 1981a deferral in that it does not clearly state that both principal and interest payments may be deferred, nor does it state that the interest accruing during the deferral period will not be capitalized. This description does not give the borrower an indication of how the agency has construed the statutory criteria. The description does not provide the borrower with any indication of the types of circumstances FmHA will consider to be beyond the borrower's control, nor how long a temporary inability to pay can last, nor how living standards are to be determined. The form also fails to provide the borrower with notice of any of the various non-statutory conditions of deferral eligibility the agency has imposed by regulation. Form 1924-14 also fails to adequately describe the criteria for eligibility for the other loan servicing options available, nor does it describe how the borrwers' terms or rates of interest may change with rescheduling and reamortization. It does not describe how long a loan can be rescheduled or reamortized and does not describe how interest rates can be reduced through these actions.

This passage contains only some of the many additions proposed by plaintiffs. If these proposals were adopted, the result would be a booklet of intimidating length and technical detail, which would not likely be read, and even less likely understood, by many members of the plaintiff class. This court finds that the scheme of defendants, in which borrowers are given general notice of what kinds of options are available and directed to contact their county office with questions concerning them, is a constitutionally permissable, and even preferable, alternative. This court notes that FmHA incorporated many of the changes suggested in the comment submitted by the Center for Rural Affairs in its final versions of the forms.

Plaintiffs have, however, identified several constitutional infirmities in the notice given by the forms. The three forms are sent together. FmHA 1924-25 notifies the borrower of the default and the impending adverse action, and directs the borrowers attention to various aspects of FmHA 1924-26. FmHA 1924-26 presents the borrower with a series of choices of which, if any, loan servicing options the borrower wishes to make use of. The form must be completed and returned within thirty days. FmHA 1924-14 provides further brief descriptions of the loan servicing options listed on FmHA 1924-26, and of some of the responsibilities of the borrower. It also states that the borrower can obtain additional information from the FmHA county supervisor. Forms FmHA 1924-14 and 1924-25 are notice forms, but FmHA 1924-26 is both a notice form and something more. Because the choices made by the borrower on this form are binding, and act to foreclose other options, this form is actually the first step in the application of the adverse action. The completion of, or the failure to complete, FmHA 1924-26 can be the decisive act in the liquidation process. Because of the potential impact of this form, and particularly because of the number and complexity of the options available, the notice given borrowers must be both clear and comprehensive. The weak link in the present notice system is the reference of borrowers to the county offices for further information.

Plaintiffs have submitted uncontradicted evidence that borrowers who seek additional information from county FmHA offices pursuant to the statement on FmHA 1924-26 receive inadequate or misleading information, or no information at all. They assert that FmHA has taken no substantial steps to ensure that FmHA county agents have current, uniform, comprehensive information with which to respond to requests for information. Further, it is possible that many borrowers will not read to the bottom of FmHA 1924-26, which is an only slightly helpful document.

Form FmHA 1924-26 must have added to it the statement, prominently displayed, that complete explanations of the various options listed on the form, and the implications or effects of choosing or rejecting them, are available at the local county FmHA office. FmHA must formulate and distribute to all of its county offices uniform and comprehensive, but also clear and readable, explanations of each of the options listed on FmHA 1924-26, including, but not necessarily limited to, the eligibility requirements, terms, restrictions, and benefits of each option, and the effect that choosing one option would have in foreclosing the availability of other options. These explanations will aid FmHA personnel in responding to borrowers' requests for information. These explanations must also be promptly provided to borrowers upon request, in lieu of or in addition to any oral explanation, at the option of the borrower. Each explanation must be clearly labelled to identify which option on FmHA 1924-26 it applies to. Complete sets of the explanations, serving in sum as a comprehensive guide to the completion of FmHA 1924-26, must be promptly provided to borrowers upon request. By way of example, the relevant explanations would include the availability of the various types of "debt settlement."

The combination of the concise information presented in the three forms mailed to the borrowers with the comprehensive supplementary information available upon request will provide due process notice well tailored to the unique circumstances of this case.

Plaintiffs have also identified a flaw in the mechanics of FmHA 1924-26. The form orders borrowers to choose options from any one, but only one, of four categories. A single FmHA 1924-26 form, however, can cover more than one loan, or more than one basis for adverse action on a single loan. As a result a borrower who, for example, is having a loan accelerated because of a default on the payements due and also because of an improper disposition of security, would confront a dilemma. The borrower would not be allowed to apply for loan servicing to cure the default and to also make restitution to cure the improper disposition. Defendants must redraft FmHA 1924-26 to allow borrowers to make a separate election of options for each loan accelerated and for each reason given for each proposed adverse action. Providing a separate form for each loan or basis for adverse action would be one possible solution.

The above flaw in FmHA 1924-26 is not an instance of insufficient notice. It is instead a denial of due process in the form of an arbitrary deprivation of a protected property right. FmHA 1924-26 operates, in some circumstances, to deprive borrowers of protected interests without the opportunity for a hearing on the merits. The due process clause requires fundamental fairness in the operation of proceedings to deprive citizens of protected interests. Lassiter v. Department of Social Services of Durham County, N.C., 452 U.S. 18, 24 (1981) reh. den. 453 U.S. 927. The effect of FmHA 1924-26 is fundamentally unfair, and so the form must be altered to provide all borrowers with the full process due them.

Therefore IT IS ORDERED:

Plaintiffs' claims for relief numbers one, two, three, four, five, six, eight, nine, eleven, twelve, thirteen, and fourteen are hereby dismissed with prejudice to the bringing of another action for the same cause or causes.

Plaintiffs' seventh claim for relief is hereby dismissed with prejudice to the bringing of another action for the same cause or causes, except that it is not dismissed so far as it challenges the adoption of 7 C.F.R. § 1951.44(b)(5) for failure by FmHA to include with the publication of the rule a concise general statement of the basis and purpose of the rule.

Defendants are hereby ordered to submit to this court within thirty days of the filing of this order a concise general statement of the true basis and purpose of 7 C.F.R. § 1951.44(b)(5) as contemplated at the time the rule was promulgated.

Defendants are hereby ordered to amend form FmHA 1924-26 by adding to it, prominently displayed, a statement that explanations of the various options listed on the form, and the effect of choosing one of them, are available at the county FmHA office.

Defendants are hereby ordered to file with this court, and deliver to counsel for plaintiffs, within thirty days after the entry of this order, comprehensive, but also clear and readable, explanations of each of the options listed on FmHA 1924-26, including, but not necessarily limited to, the eligibility requirements, terms, restrictions, and benefits of each option, and the effect that choosing that option would have in foreclosing the availability of other options. Plaintiffs will have twenty days from the date of the filing of the explanations to file with this court, and deliver to counsel for defendants, any suggestions regarding the content of the explanations.

Defendants are hereby ordered to amend form FmHA 1924-26 to allow borrowers to make a separate election of options for each loan accelerated and for each reason given for each proposed action.

Dated this 7 day of May, 1987, at Bismarck, North Dakota.

Bruce M Van Sickle

Bruce M. Van Sickle, Judge
United States District Court

NOTICE OF ENTRY
Take notice that the original of this copy was entered in the office of the clerk of the United States District Court for the District of North Dakota on the 7 day of May 1987.
EDWARD J. KLECKER, CLERK

By: ________ Deputy

FILED
MAY - 7 1987
2:08 pm
EDWARD J. KLECKER, CLERK
U.S. DISTRICT COURT-NORTH DAKOTA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

Dwight Coleman et. al.,

Plaintiffs,

v.

Richard E. Lyng, Secretary of Agriculture, et. al.,

Defendants.

A1-83-47

Memorandum and Order

Plaintiffs' First Amended Supplemental Class Action Complaint was filed January 21, 1986. The factual background of the supplemental complaint is provided in Coleman v. Block, 632 F.Supp. 1005 (D.N.D. 1986). Defendants have brought a motion for an order granting a summary judgment of dismissal of the supplemental complaint, filed June 16, 1986. The motion has been exhaustively briefed, and was the subject of a hearing held March 23, 1987.

The supplemental complaint presents fourteen claims for relief, all of which are challenged by the summary judgment motion. Defendants asserted in their briefs and at the hearing that the first, second, third, and fifth claims for relief are no longer at issue, having been resolved to the satisfaction of the parties, though without any formal settlement agreement. Plaintiffs acquiesced to this assertion, and have not pressed or defended these four claims at any time in these summary judgment proceedings.

The first and second claims allege that the FmHA regulations published November 1, 1985, eliminated the previous priority given to security releases for necessary family and farm living and operating expenses, and that this regulatory change was arbitrary and capricious and constituted a taking without just compensation. FmHA's policy on living and operating releases was subsequently modified, apparently to plaintiffs' satisfaction. The third and fifth claims allege that no hearing or appeals process was available to borrowers who were unable to reach agreement with the FmHa county supervisor on the use of future farm income, or who were denied requested releases of security for living and operating expenses, in violation of the due process clause of the Fifth Amendment to the United States Constitution. Access to FmHA's appeal process has since been extended to these situations, again apparently to plaintiffs' satisfaction. Summary judgment dismissing these four claims will be ordered.

The sixth claim alleges that FmHA's form 1962-1, which is the document used in forecasting farm income and expenses, is virtually impossible to complete, and so should be set aside as an arbitrary and capricious abuse of discretion. This claim is the subject of settlement discussions which apparently are nearing fruition. Briefing and resolution of this claim has been stayed in anticipation of settlement.

The summary judgment motion against the other nine claims for relief remains for review. Five of these claims are based on section 706 of the Administrative Procedures Act:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall --
>
> > (1) compel agency action unlawfully withheld or unreasonably delayed; and
> >
> > (2) hold unlawful and set aside agency action, findings, and conclusions found to be --
> >
> > > (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
> > >
> > > (B) contrary to constitutional right, power, privilege, or immunity;
> > >
> > > (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
> > >
> > > (D) without observance of procedure required by law;
> > >
> > > (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
> > >
> > > (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

5 U.S.C. § 706.

Claims 4, 7, 9, and 12 invoke § 706(2)(A), claims 7 and 12 invoke § 706(2)(C), claims 11 and 12 invoke § 706(2)(D), and claim 11 invokes § 706(2)(E). The "substantial evidence" standard of subsection (E) is only applicable to administrative actions or findings that are based on a hearing record. Camp v. Pitts, 411 U.S. 138, 140-141 (1978). The rulemaking procedure utilized by FmHA in this case was the informal notice and comment method under 5 U.S.C. § 553(c), not the formal hearing method under 5 U.S.C. §§ 556 and 557. Since the administrative actions now at issue were not based on a hearing record, 5 U.S.C. § 706(2)(E) is not applicable to this case, and plaintiffs' complaint will be dismissed to the extent it is based on that subsection.

A federal court reviewing agency action pursuant to 5 U.S.C. § 706(2)(A) will normally consider only the administrative record on which the action was based. Arkla Exploration Co. v. Texas Oil & Gas Corp., 734 F.2d 347, 357 (8th Cir. 1984). Supplementary material can be admitted and considered for the limited purpose of explaining the record. Id. The court can consider additional evidence only if the record and the supplementary material do not provide an adequate basis for judicial review. Independent Meat Packers Association v. Butz, 526 F.2d 228, 238-239 (8th Cir. 1975). If the supplemented record does provide an adequate basis for review, the issues are ripe for summary judgment. Bank of Commerce of Laredo v. City National Bank of Laredo, 484 F.2d 284, 288-289 (5th Cir. 1973), cert. denied, 416 U.S. 905 (1974). It is apparent that issues raised by a review of agency action pursuant to subsections (C) and (D) of 5 U.S.C. § 706(2) will as a rule involve only questions of law, and so also will be ripe for summary judgment, unless the record before the court is wholly inadequate.

The administrative record was filed with this court on January 21, 1986 (Docket No. 263). The record consists of the following:

> 1. A set of documents referred to as the "pretermination package." These are the forms used by FmHA in the course of taking adverse actions against borrowers between November 14, 1983, and October 19, 1984. This set of forms replaced those that were in use when this court's permanent injunction was issued, and was superseded by the new forms and regulations currently at issue.
>
> 2. The proposed regulations as published on November 30, 1984, at 49 FR 47007.
>
> 3. More than 250 written comments submitted to FmHA concerning the proposed regulations. These comments are discussed below.
>
> 4. A letter from Administrator Vance Clark dated October 23, 1985, requesting publication of the final regulations in the Federal Register.
>
> 5. The final regulations as published on November 1, 1985, at 50 FR 45740.

The vast majority of the comments submitted to FmHA are letters from private individuals, presumably farmers. Almost all of these are form letters, apparently composed, printed, and distributed by various parties, and then signed and submitted individually. The letters vary somewhat in tone and content, but all express strong opposition to some provisions of the proposed regulations. The provisions targeted by the letters, however, are not at issue before this court, either because the conflict concerning them has been resolved as outlined above, or because they were not challenged in the supplemental complaint.

Of the remaining comments, six are short letters from FmHA officials directed at matters not at issue in this case.

A seventh letter, from James D. Reifsteck, Chief, FmHA Farmer Programs, Illinois, criticizes one aspect of the proposed text of FmHA form 1924-26, which is at issue. Mr. Reifsteck's criticism of subsection II(D) of form 1924-26 is quite brief, but is relevant to one aspect of plaintiffs' tenth claim for relief.

Another letter is signed by a Richard D. Long, Assistant Inspector General for Analysis and Evaluation. It is not clear whether Mr. Long is attached to FmHA or some other agency, but in any event his letter does not address any provision challenged by the supplemental complaint. "The Office of the Inspector General" also submitted an unsigned eight page critique of the proposed regulations. This comment is aimed mainly at technical and stylistic changes. One of the suggested changes would have clarified the subsection that describes the effect of a borrower's failure to return, by the specified time, a completed form 1924-26. The critic would insert the statement that the borrower would thereby "forfeit the right to administrative appeal." The suggested language is certainly more clear than that of the proposed rule, but it was not adopted in the final version. Indeed, the final version omits any direct statement at all of the fact that failure to file the form results in losing the right to appeal the adverse action. The approach of FmHA to such matters can perhaps be inferred from the note pencilled in beside this suggestion: "We don't want to use the word 'forfeit.'" Another suggestion made by the comment was to replace a subsection in the proposed rules with a new version beginning with the following sentence: "The applicant or borrower has a right to know the specific reasons for intended adverse actions." A comment pencilled in beside this suggestion reads: "Stay away from words like 'right.'" Although other aspects of the suggested replacement paragraph were incorporated in the final version, this first sentence was not adopted.

A letter by two New Mexico attorneys addresses an issue not before this court. Another letter is by Martha Miller, an attorney for the plaintiffs in the Curry v. Block litigation. In Curry, a statewide class of Georgia FmHA borrowers challenged FmHA loan servicing practices. See Curry v. Block, 541 F.Supp. 506 (1982), aff'd. 738 F.2d 1556 (11th Cir. 1984). Three of Ms. Miller's criticisms touch on matters currently at issue. She points out that FmHA failed to publish proposed versions of FmHA forms 1924-14, 1924-25, and 1925-26 along with the proposed rules, rendering any comment on their contents impossible. This point is one aspect of plaintiffs' eleventh claim for relief. Ms. Miller requested that FmHA publish the proposed texts of the forms for comment, but FmHA apparently did not do so. Two of her criticisms of the proposed procedure for determining the eligibility of borrowers for loan deferrals stem from the unavailability of retroactive deferrals and the incorporation of subjective factors in the eligibility determination. These criticisms are quite brief and not specific, but appear to involve some of the same concerns raised in plaintiffs' claims 12, 13, 14 and 7.

Gary DeCramer, a state senator from Minnesota, submitted five criticisms of the proposed rules in a letter. Substantially the same five criticisms were endorsed by the Minnesota Senate in the form of a resolution, which was forwarded to FmHa as a comment. Two of these criticisms, directed at the requirements that borrowers seek partial write-offs or restructurings of loans they have with local private lenders and have paid the real estate taxes and insurance premiums on their property in order to be considered eligible for loan deferrals, are also incorporated in plaintiffs' seventh claim for relief.

Minnesota Attorney General Hubert H. Humphrey III submitted a comment containing several criticisms, one of which was targeted at the allegedly vague and subjective factors that are considered by FmHA in determining deferral eligibility. As noted above, this concern is also raised in plaintiffs' seventh claim for relief. The Illinois South Project, Inc., also criticized this aspect of the program, as well as the requirement that borrowers seek to adjust their debts with local lenders. The comments submitted by Iowa Citizens for Community Improvement, Nebraska Governor Bob Kerrey, and Southern Minnesota Regional Services attorney Obert Knutson are not directed at issues currently before the court.

The final comment to be considered is the lengthy and thorough critique submitted by the Center for Rural Affairs in Walthill, Nebraska. A number of the Center's criticisms are relevant to the present review, and will be referred to in the course of this court's discussion of the claims for relief below.

5 U.S.C. § 553(c) requires that "[a]fter consideration of the material presented [in the administrative record], the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose." A ten page preface to the final rules as published presents such a statement, the sufficiency of which will be determined by this court in the course of the review below of the various provisions challenged in the supplemental complaint.

Courts reviewing agency actions pursuant to 5 U.S.C. § 706(2)(A) employ a narrow standard of review:

> Section 706(2)(A) requires a finding that the actual choice made was not "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A) (1964 ed., Supp. V.). To make this finding the court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. (Citations ommitted). Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency.

Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971).

To overturn an agency action as arbitrary and capricious, a court must find "[s]omething more than mere error." First

National Bank of Fayetteville v. Smith, 508 F.2d 1371, 1376 (8th Cir. 1974).

A reviewing court will also apply a narrow standard when considering questions of the proper construction of some statutes and administrative regulations:

> When faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. "To sustain the Commisssion's application of this statutory term, we need not find that its construction is the only reasonable one or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings." (Citations ommitted). "Particularly is this respect due when the administrative practice at stake 'involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new.'" (Citations ommitted). When the construction of an administrative regulation rather than a statute is at issue, deference is even more clearly in order.

Udall v. Tallman, 380 U.S. 1, 16 (1965).

Two observations are in order before reviewing the remaining claims. First, plaintiffs have, in their briefs and argument, attempted to bring certain allegedly improper practices of FmHA agents within this court's review. Their complaint, however, challenges only the propriety of the regulations themselves, not the manner in which those regulations are implemented. This court's review will be limited to the question of whether the adoption of the rules by FmHA was proper. Second, this court recognizes that it is a bewildering and regrettable phenomenon of any bureaucracy that agencies set up to regulate the activities of some members of the public often end up abetting their malfeasance, while agencies created to provide support to other members of the public often end up antagonistic to their interests. This court, however, is an organ of neither the legislature nor the executive, and has no role to play in the formulation of bureaucratic policy other than to review it according to the lawful standards discussed above.

Plaintiffs' fourth claim for relief alleges that FmHA's policy of not releasing security for living and operating expenses if the borrower has sufficient off-farm income to meet those expenses is contrary to 7 U.S.C. § 1985, and so must be set aside pursuant to 5 U.S.C. § 706(A) as being not in accordance with law. 7 U.S.C. § 1985(f)(1) provides:

> Until such time as the Secretary accelerates a loan made or insured under this title, the Secretary shall release from the normal income security provided for such loan an amount sufficient to pay the essential household and farm operating expenses of the borrower, as determined by the Secretary.

Plaintiffs' position apparently is that this provision requires that FmHA grant releases for amounts equivalent to the minimum income level borrowers need to maintain their households and farms, even to those borrowers who do not actually need the released funds because they are receiving off-farm income sufficient to meet those minimum needs. Defendants' position is that FmHA's practice of granting releases in the amount actually needed by individual borrowers to meet minimum household and operating expenses is based on a permissable, and even the proper, interpretation of the statute.

This is a statute which FmHA is charged with implementing, and so this court will be inclined to defer to that agency's interpretation of its mandate. Further, this court will not substitute its judgment for that of the agency, but will instead only overturn the agency's determination if clear error is shown. FmHA's interpretation is not clearly erroneous. Even if this court were to substitute its own opinion for that of FmHA, it would nevertheless rule that FmHA's interpretation is the correct one, and is certainly preferable to the strained reading offered by plaintiffs.

Plaintiffs have raised no substantive defense of this claim in the face of defendants' summary judgment motion. This court informed plaintiffs at the March 23 hearing that an order granting a summary judgment of dismissal of this claim would be entered for the above reasons unless they presented some persuasive argument on its behalf, but counsel for plaintiffs declined to address the issue at all. Because FmHA's policy is a permissable implementation of 7 U.S.C. § 1985(f)(1) under the relevant standards of judicial review, an order granting a summary judgment of dismissal of plaintiffs' fourth claim for relief will be entered.

Plaintiffs' seventh claim for relief seeks to have three of the thirteen requirements FmHA considers when determining whether a borrower is eligible for a loan deferral held invalid. The three requirements challenged are found at 7 C.F.R § 1951.44:

> (b) Conditions. In order to be considered for a deferral, the borrower must meet all of the following conditions:
>
> . . .
>
> (5) The borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors in accordance with Subpart A of Part 1903 of this chapter.
>
> (c) FmHA's determinations. The FmHA official must determine that the borrower:
>
> . . .
>
> (3) Before experiencing the hardship, had paid, when due, all real estate taxes and property insurance premiums, and otherwise had complies [sic] with the other conditions of the loan documents;
>
> . . .
>
> (5) Applied recommended and recognized successful production and financial management practices;

(Emphasis in original).

Plaintiff challenges these provisions pursuant to subsections (2)(A) and (2)(C) of 5 U.S.C. § 706. To the extent that the seventh claim for relief may state a claim under § 706 (2)(E), such a claim will be dismissed for the reasons outlined above.

Plaintiffs' claim under subsection (2)(C) is that FmHA's adoption of the challenged provisions is in excess of that agency's statutory authority, citing 7 U.S.C. § 1981a. That statute grants the Secretary of the Department of Agriculture the authority to defer FmHA loans "upon a showing by the borrower that due to circumstances beyond the borrower's control, the borrower is temporarily unable to continue making payments of such principal and interest without unduly impairing the standard of living of the borrower." 7 U.S.C. § 1981a. The three criteria for eligibility contained in this sentence of the statute are reflected in three of the eligibility requirements set forth under 7 C.F.R. § 1951.44.

Plaintiffs' concede that FmHA has the authority to adopt eligibility criteria in addition to the three mandated by the statute. This position is correct. See Curry v. Block, 738 F.2d 1556, 1561 (11th Cir. 1984), citing Allison v. Block, 723 F.2d 631, 637 (8th Cir. 1983). In adopting the ten additional requirements, then, the agency was not acting "in excess of statutory jurisdiction." An order granting a summary judgment of dismissal of plaintiffs' seventh claim for relief, so far as that claim rests on 5 U.S.C. § 706(2)(C), will be entered.

Plaintiffs raise a number of policy arguments in opposition to the requirement that borrowers seek to have the debts they owe to private creditors adjusted before they can be eligible for a deferral from FmHA. It does appear to this court that these arguments have some merit, and that this eligibility requirement may cause personal and financial difficulties for borrowers and their private creditors without greatly benefitting FmHA's loan program. However, as outlined above, this court cannot interject its own opinion of the preferable course of administrative policy, it can only determine whether the option actually chosen was a permissable one.

FmHA is intended to operate as a lender of last resort, providing credit to farmers who cannot obtain credit from private lenders. Curry v. Block, 541 F.Supp. 506, 511 (S.D.Ga. 1982) (Discussion of FmHA's history and statutory and regulatory framework). Section 1951(b)(5) apparently embodies a decision by FmHA to also act as a debt adjustor of last resort, deferring the loans of borrowers who cannot obtain deferrals elsewhere. However, FmHA has failed to follow the proper procedure in adopting this regulation. As was noted above, 5 U.S.C. § 553(c) requires FmHA to include with the final regulations promulgated a concise general statement of their basis and purpose. As was also noted above, this particular eligibility requirement was the subject of some criticism in the comments received during the notice period. FmHA responded to those comments in its statement of the basis and purpose of the requirement. That statement, in its entirety, is as follows:

> A number of respondents object to the condition in § 1951.44(b)(5) that a borrower must have attempted voluntary debt adjustment and/or rescheduling of payments with other creditors before receiving a deferral. The respondents believed this to be unduly harsh on suppliers, feed dealers and other creditors who expect full payment of debts in order to operate a viable business. FmHA, as a creditor, also expects full payment but has a responsibility to assist the borrower through a temporary period of reduced income with forbearance, in the form of a deferral. As long as the borrower's situation can improve, all creditors share that responsibility to assist borrowers through a time of financial difficulties for the benefit of the agriculatural community. Many creditors may even improve their chances of debt collection because, if debt adjustment or rescheduling is not provided, the borrower may seek protection under the bankruptcy laws.

Consequently, the proposed amendment is adopted. 50 C.F.R. 45741.

The statement correctly asserts that FmHA has a special obligation to assist borrowers through difficult times. The further assertion that private creditors share this obligation may be at least arguable as a principle of economic morality, but as a statement of legal duty it is entirely unsupported. The idea that the requirement was adopted to facilitate debt collection by private creditors is plainly an ex post facto rationalization.

Defendants argue, in response to a similar challenge in claim eleven, that because their preface to the final rules is ten pages long and discusses the various sections and subsections individually, it must be sufficient to meet the "concise general statement" requirement of 5 U.S.C. § 553(c). However, it is the content, rather than the length and format, of the statement that is crucial. "The 'basis and purpose' statement required by Section 4(c) of the APA must be sufficiently detailed and informative to allow a searching judicial scrutiny of how and why the regulations were actually adopted." Amoco Oil Co. v. Environmental Protection Agency, 501 F.2d 722 (D.C. Cir. 1974). The above statement does not inform the court of why this eligibility criterion was adopted. As was noted above, this rule was one of the main targets of criticism in the comments received, effectively requiring FmHA to explain this particular aspect of the overall scheme. If FmHA truly adopted this rule simply because it didn't seem fair to the agency's decision makers that private lenders don't share FmHA's statutory duty to provide debt restructuring, then the rule will certainly be struck down as arbitrary and capricious. However, this court will for now treat the statement as a failure to explain, and will therefore require FmHA to supplement the record before finally reviewing the propriety of the rule. Camp v. Pitts, 411 U.S. 138, 143-144 (1973).

This court finds that the preface to the final rules fails to provide a concise general statement of either the basis or the purpose of 7 C.F.R. § 1951.44(b)(5), and so fails to meet the requirements of 5 U.S.C. § 553(c). This court will enter an order requiring FmHA to supplement the administrative record within thirty days of the entry of the order with a concise general statement of the basis and purpose of 7 C.F.R. § 1951.44(b)(5) as truly contemplated at the time that rule was promulgated.

Plaintiffs' objection to the requirement that the borrower have paid the real estate taxes and property insurance premiums prior to the onset of the hardship that causes the borrower to seek a deferral rests on an alleged underlying practice of FmHA agents. Plaintiffs claim that FmHA agents often unreasonably delay or deny security releases for farm and living expenses. They allege that the failure of borrowers to timely pay their taxes and insurance premiums, both considered farm operating expenses by FmHA, is often due to FmHA's failure to release funds for those purposes. This claim does not attack the merits of 7 C.F.R. § 1951.44(c)(3), but instead is a largely unsupported attack on the performance of unspecified FmHA agents. This court does not deny that there may well be substance to plaintiffs' allegations, but these allegations, even if proved, do not impugn the propriety of the eligibility requirement itself. They would instead provide the basis for challenges by individual borrowers of findings by FmHA that they are ineligible for loan deferrals. This court will enter an order granting a summary judgment of dismissal of plaintiffs' seventh claim for relief, so far as that claim challenges 7 C.F.R. § 1951.44(c)(3).

Plaintiffs' challenge to the requirement that borrowers have applied unspecified sound production and financial practices similarly misses the mark. It is clear that it is within the discretion of FmHA to require that sound practices be followed. FmHA must be allowed to protect its security by refusing loan deferrals to at least the most incompetent or recalcitrant farmers. Plaintiffs do not contest this, but argue instead that what practices are sound varies widely over time, geography, and type of agricultural operation, and that there is disagreement among professionals over which practices should be followed. Therefore, plaintiffs assert, implementation of this requirement will be inherently arbitrary. But that argument actually supports the premise that sound practices are subject to many variable factors and that decisions regarding them must be made on an ad hoc basis. It is evident from plaintiffs' own argument that FmHA cannot be required by a court to publish a single set of sound practices. It is also evident that FmHA cannot be barred by a court from requiring that sound practices be followed. If plaintiffs' prediction is accurate, and incidents of this requirement being applied unfairly or arbitrarily do occur, then the individuals affected will be free to challenge those applications of the regulation. A pattern of abuse of this requirement, or of 7 C.F.R. § 1951.44(c)(3), could even serve as the basis for a class-wide challenge. The regulation itself, however, is not impermissable under the standards of 5 U.S.C. § 706(2)(A). This court will enter an order granting a summary judgment of dismissal of plaintiffs' seventh claim for relief, so far as that claim challenges 7 C.F.R. § 1951.44(c)(5)

The two eligibility requirements discussed immediately above were objected to in several of the comments contained in the administrative record. This court finds, however, that FmHA's decision to retain these requirements in the final rules despite these comments was a permissable policy decision rather than an arbitrary, capricious or extra-discretionary act.

Plaintiffs' ninth claim for relief challenges 7 C.F.R. §§ 1872.17(b)(5), 1955.15(d)(2), and 1962.40(c). Section 1872.17(b)(5) provides:

> (5) Multiple loans and loans secured by both real estate and chattels. When a borrower is indebted

> to the FMHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purposes of the other FmHA loans, all FmHA loans should be liquidated. If a borrower has a loan(s) secured only by chattels or if a borrower has a loan(s) secured by both real estate and chattels, liquidation of real estate and chattel security will be started at the same time. Chattel security will be liquidated under Subpart A or [sic] Part 1962 of this chapter, except that when an account(s) secured by chattels only or by both chattels and real estate will be transferred, such transfer(s) will be accomplished in accordance with § 1872.18 of this subpart. When a farmer program loan borrower also has another FmHA loan secured by property which also serves as security for the farmer program loan, the non-farmer program loan will be accelerated at the same time the borrower is sent Form FmHA 1924-25.

The other regulations challenged refer to or rely on the above provision.

In their complaint plaintiffs assert that adoption of this rule was arbitrary, capricious and an abuse of discretion pursuant to 5 U.S.C. § 706(2)(A), because it will lead to anomalous and unfair results. They argue that under state law a borrower will typically have a substantial period of time in which to cure the delinquency on the real estate loan that is in default, but will quickly be stripped of the chattels securing the simultaneously liquidated loan that is not in default. The most likely scenario would involve a farmer who is in default on an FmHA loan secured by real estate but who is current on another FmHA loan secured by the crops growing on that real estate. The farmer would lose the crops through foreclosure some time before the end of the redemption period for the real estate foreclosure. During that time the farmer would not receive the profits from the crops, which arguably could be used to cure or redeem the real estate loan.

Defendants point out that this rule has been in effect for twenty-seven years, and that plaintiffs' scenario is an unlikely one, as a borrower in the position described by plaintiffs is unlikely to redeem the real estate regardless of the disposition of the crops. They argue that simultaneous liquidation is a proper procedure for the protection of FmHA's security. Plaintiffs have not responded to defendants arguments, or presented any defense or support for this claim beyond the complaint itself. Plaintiffs have also not shown or attempted to show that application of this rule is contrary to the law of any state. If the law of a state forbids the procedure provided by section 1872.17(b)(5) plaintiffs are, of course, free to challenge the use of the procedure in that state. This court finds that the ninth claim as presented is a policy argument, rather than a legal challenge. This court will not and cannot substitute its judgment for that of the agency. FmHA is charged with protecting the security of its loans, and it is well within the discretion of the agency to enact this regulation in furtherance of that goal. No opposition to the retention of this policy can be found in the administrative record. This court will enter an order granting a summary judgment of dismissal of plaintiffs' ninth claim for relief.

Plaintiffs' eleventh claim for relief alleges that FmHA failed to comply with the publication and explanation requirements of 5 U.S.C. § 553 in adopting five provisions of the rules and three forms used in implementing the rules. Forms FmHA 1924-14, 1924-25, and 1924-26 were not published with the proposed rules for comment. As noted above, this lack of publication was the subject of some criticism in the comments received. The comment submitted by the Center for Rural Affairs was particularly critical of this omission, and suggested that in the future the publication of proposed rules include the forms that will implement those rules. Since plaintiffs' tenth claim for relief is a challenge to the adequacy of these very forms, this suggestion would seem well made. Advance publication for comment could have resulted in better forms and less litigation. However, as this court has previously noted, these forms do not fall within the publication requirements of 5 U.S.C. § 553 because they are not "rules" under 5 U.S.C. § 551(4). Coleman v. Block, 632 F.Supp. 1005, 1015 (D.N.D. 1986). That forms are not rules is well recognized, and plaintiffs have apparently abandoned this claim. This court will enter an order granting a summary judgment of dismissal of plaintiffs' eleventh claim for relief, so far as that claim concerns forms FmHA 1924-14, 1924-25, and 1924-26.

Two of the provisions challenged for lack of publication have been subsequently altered or superseded, and plaintiffs state in their Response to Defendants' Motion for Summary

Judgment that these subsequent actions have resolved their challenges to these passages.

The three remaining challenged provisions are now published at 7 C.F.R. §§ 1924.57(d)(1) and 1962.17(b). A detailed exposition of the provisions is unnecessary. Each challenged provision consists of a sentence or phrase that is included in the final version of the relevant subsection without having been published in the proposed rules. These provisions clarify or expand on the content of the subsection as published in the proposed rules.

5 U.S.C. § 553(b) provides in pertinent part:

> (b) General notice of proposed rule making shall be published in the Federal Register.... The notice shall include --
>
> (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

It is evident from the text of the statute, and from simple logic, that an agency is not required to publish in the proposed the rules the precise text of the final rules. This position is supported in the case law. E.g. Daniel International Corporation v. Occupational Safety and Health Review Comm., 656 F.2d 925, 932 (4th Cir. 1981). The three passages at issue are logical modifications of the proposed subsections, and do not change the basic character or purpose of the subsections, but rather make them more detailed and specific. The publication by FmHA of the proposed rules placed the public on notice that the entire scheme of FmHA's loan operations was being modified, and the eventual incorporation into the rules of the three phrases at issue was well within the borders of that notice. The lack of prior publication of these passages does not approach a violation of the publication requirement of 5 U.S.C. § 553(b)(3). It appears from plaintiffs' brief that their true quarrel is again not with the rules themselves, but with the alleged improper application of those rules. They of course remain free to challenge improper applications of these provisions by FmHA personnel.

FmHA made only cursory references to these changes or additions in its preface to the final rules. A failure to explain the basis and purpose of changes as minor as these, however, is not a violation of the concise general statement requirement of 5 U.S.C. § 553(c). It is evident that the changes were instituted not for any overarching policy reason, but simply to make the rules more detailed and specific.

For the above reasons, this court will enter an order granting a summary judgment of dismissal of plaintiffs' eleventh claim for relief.

In December of 1983, in an effort to comply with this court's preliminary injunction of November 14, 1983, FmHA promulgated a set of forms and procedures now referred to as the "pretermination package." The pretermination package was used to accelerate delinquent FmHA debts until October, 1984, when they were superseded by the regulations now at issue. It is FmHA's policy that the borrowers whose loans were accelerated under the pretermination package, but who have not been finally foreclosed on, will not have their loans reaccelerated under the new procedures. In their twelfth claim for relief, plaintiffs challenge both the adoption of the pretermination package and the determination not to allow reacceleration.

On January 30, 1984, plaintiffs filed a Motion to Show Cause Why Defendants' Temporary Compliance Procedures Should Not be Cancelled by Court Order, challenging the pretermination package. This court entered an order on February 6, 1984, holding this motion in abeyance. The order stated that the motion was being held in abeyance because of the possibility that it would be rendered moot by the forthcoming permanent injunction, and provided that "if the motion is not rendered moot by the Court's ruling on the permanent injunction, plaintiffs are free to reassert the motion, whereupon defendants will have ten (10) days to respond." Coleman v. Block, A1-83-47, slip op. at 2, (D. N.D. Feb. 6, 1984)(Docket No. 117). Plaintiffs did not reassert the motion.

This court is sitting as a court of equity, and so the doctrine of laches is applicable. Minnesota Mining and Manufacturing Co. v. Berwick Industries, Inc., 532 F.2d 330, 334 (3d Cir. 1976). "Laches is an equitable doctrine which bars an action where a party's unexcused or unreasonable delay has prejudiced his adversary." Ruiz v. Shelby County Sheriff's Department, 725 F.2d 388, 393 (6th Cir. 1984).

"Laches cases proceed on the assumption that 'the party against whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless, or have been abandoned; and that because of the changing conditions or relations during this period of delay it would be an injustice to the latter to permit him to now assert them.'" Concerned About Trident v. Schlesinger, 400 F.Supp. 454, 478 (D. D.C. 1975) cause remanded 555 f.2d 817, quoting Galliher v. Caldwell, 145 U.S. 368, 372 (1892). This is precisely what has occurred in this case. Plaintiffs knew immediately after the entry of this court's permanent injunction of February 17, 1984, that their motion had not been rendered moot, but instead of reasserting their motion, they, in the language of the law of equity, "slumbered on their rights." While plaintiffs slumbered, defendants used the pretermination package to accelerate, without challenge, the loans of thousands of borrowers. Plaintiffs cannot now ask a court of equity to require defendants to abandon these accelerations when they could have, and should have, challenged the procedures and forms used before the accelerations were accomplished. To so require would allow plaintiffs' unexcused delay to unjustly prejudice defendants. It could also unjustly prejudice the very borrowers that counsel for plaintiff seek to help. The personal upheaval that would result from an order setting aside the interim accelerations and foreclosures, and requiring that the borrowers have their loans accelerated for a second time, could well be instance of a good intentions producing harmful results. When some bad event has come to an end, there is much to be said for leaving the peace undisturbed, so that all concerned can proceed with their lives without further turmoil and anxiety, and put the past behind them.

Laches applies to delays in filing a complaint, not to delays in the course of litigation. Boone v. Mechanical Specialties, 609 F.2d 956, 958 (9th Cir. 1979). This court considers that the filing of a supplemental complaint, particularly in a case of this magnitude and duration, has the same character as the filing of an initial complaint, and so the doctrine can be applied. This court will enter an order granting a motion of summary judgment of dismissal of plaintiffs' twelfth claim for relief.

The remaining four claims -- eight, ten, thirteen, and fourteen -- are not brought by plaintiffs under 5 U.S.C. § 706, but instead are brought under two provisions of the Fifth Amendment to the United States Constitution. Claims eight, ten, and thirteen allege violations of the due process clause, and claim fourteen alleges a violation of the equal protection clause. Claims thirteen and fourteen challenge the constitutionality of the pretermination package. This court will enter an order granting a summary judgment of dismissal of plaintiffs' thirteenth and fourteenth claims for relief, for the same reason given above for the dismissal of the twelfth claim. It should be emphasized that this in no way constitutes an endorsement by this court of the pretermination package. The comment submitted by the Center for Rural Affairs was as sharply critical of the adequacy of those forms and procedures as are plaintiffs. Plaintiffs cannot, however, bootstrap a challenge to the pretermination package into a Supplemental Complaint that challenges the provisions that superseded it. Plaintiffs have never offered any excuse or explanation for delaying their opposition to the package until it was no longer in use, and had been used in thousands of accelerations. The principles of equity do not permit plaintiffs to force the burden caused by their delay onto the shoulders of FmHA.

Although plaintiffs do not cite 5 U.S.C. § 706 in their eighth and tenth claims for relief these claims could be treated as having been brought under 5 U.S.C. §706(2)(B). 5 U.S.C. § 706 provides in pertinent part:

> To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall --
>
> ...
>
> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --
>
> (B) contrary to constitutional right, power, privilege, or immunity;

The standard of judicial review under this subsection is keener than that applied under the other subsections.

> In setting aside the lower court's cursory rejection of Porter's constitutional claim, we note the possibility that the court may have relied on agency findings or deferred to agency rulings in making its decision. This too would be error. The intent of Congress in 5 U.S.C. § 706(2)(B) was that courts should make an independent assessment of a citizen's claim of consitutional right when reviewing agency decision-making.

Porter v. Califano, 592 F.2d 770, 780 (5th Cir. 1979). The two claims could also be brought directly under the constitution, independent of 5 U.S.C. § 706(2)(B). 592 F.2d at 781. In either case, this court owes no deference to the determinations of the agency and is not limited in its review to the administrative record on which the actions were taken.

Plaintiffs' eighth claim for relief alleges that FmHA's simultaneous liquidation procedure, outlined above in the discussion of plaintiffs' ninth claim for relief, violates plaintiffs' due process rights in two respects. First, it is alleged that the terms of the regulation that authorizes a finding of jeopardization are too vague. Second, it is alleged that borrowers are not given sufficient notice when their loans are accelerated because of jeopardization.

7 C.F.R. § 1872.17(b)(5) provides in pertinent part:

> (5) Multiple loans and loans secured by both real estate and chattels. When a borrower is indebted to the FmHA for more than one type of FmHA loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FmHA loans secured by real estate is necessary and it will jeopardize the repayment of or the accomplishment of the purposes of other FmHA loans, all FmHA loans should be liquidated.

Plaintiffs contend that this regulation does not sufficiently define the standards and procedures to be used in making the determination that a loan has been jeopardized. This court finds, however, that the regulation is sufficiently specific to permit judicial review of its implementation. If a borrower were to challenge an FmHA finding of jeopardization in court or on administrative appeal, the reviewing entity would be able to make a meaningful determination of whether the particular finding was in conformance with the regulation. This quality of reviewability is sufficient to negate a finding of a constitutional violation.

Plaintiffs contend in support of their second allegation of the unconstitutionality of claim eight that borrowers will not receive adequate notice when their loans are accelarated on the basis of jeopardization. This problem was addressed by this court in its permanent injunction in this case.

> IT IS ORDERED
>
> ...
>
> B. That the defendants, their agents, subordinates, and employees are enjoined from proceeding to liquidate, or to terminate the living and operating allowance previously determined in the administration of any existing loan, unless:
>
> 1. the defendants shall give any plaintiff against whom defendants propose to proceed at least 30 days notice:
>
> a. That informs the borrower of his right to an informal hearing to contest the liquidation or termination and to establish eligibility for loan deferral pusuant to 1 U.S.C. § 1981a;
>
> b. That provides the borrower with a statement that gives the reasons for the proposed liquidation or termination;

Coleman v. Block, 580 F.Supp. 194, 210 (D. N.D. 1984). If any borrower should have a loan accelerated because of a finding that it is jeopardized, but is not given a notice clearly stating that the particular acceleration is based on a finding of jeopardization, providing the basis for that finding, and informing the borrower that the finding can be contested, then the borrower's remedy is to bring a motion in this court to have FmHA held in contempt of this court's permanent injunction in this case.

This court will enter an order granting a summary judgment of dismissal of plaintiffs' eighth claim for relief.

In their tenth claim for relief, plaintiffs assert that forms FmHA 1924-14, 1924-25, and 1924-26 do not meet the due process requirement of the fifth amendment. Copies of these three forms are attached to this order as an appendix. Notice of the impending governmental deprivation and the opportunity for a hearing on the deprivation is an essential element of due process. Goss v. Lopez, 419 U.S. 565, 579 (1975). The timing and content of the notice depends on the competing interests involved in a particular case. Id. The notice given must inform interested parties of the hearing availiable to them, and enable them to adequately prepare for it. Memphis Light, Gas & Water Division v. Craft, 436 U.S. 1, 14 (1978). The form and content of the notice "must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." Mullane v. Central

Hanover Bank & Trust Co., 339 U.S. 306, 315 (1950).

Two countervailing factors must be considered in tailoring the due process notice to the circumstances of the present case. First, FmHA borrowers have available to them a number of provisions or programs intended to help see them through crises involving their loans. These options are bewildering both in number and complexity. Second, it has been asserted without contradiction that some seventy percent of FmHA borrowers have a twelfth grade education or less. Any notice will have to strike a reasonable balance between providing complete notice of the options available and ensuring that the notice given can be read and understood by its intended recipients.

2 countervail. factors

Generally, the three FmHA forms embody a reasonable compromise of these two competing goals. Plaintiffs, however, have raised numerous objections to the forms. These objections will not be individually reviewed. The various assertions that the forms are in violation of this court's permanent injunction in this case do not address their constitutionality. The proper vehicle for these allegations would be a motion to have defendants held in contempt. This court neither encourages nor discourages the bringing of such a motion.

Contempt

The various assertions that passages of the forms are difficult to comprehend have some merit, but this court is satisfied that the difficulty does not rise to the level of a constitutional violation. On the other hand, the

A

"improvements" plaintiffs assert are constitutionally essential would greatly detract from the comprehensibility of the forms. For example, form FmHA 1924-14 is criticized in part as follows:

> It fails to adequately describe the 1981a deferral in that it does not clearly state that both principal and interest payments may be deferred, nor does it state that the interest accruing during the deferral period will not be capitalized. This description does not give the borrower an indication of how the agency has construed the statutory criteria. The description does not provide the borrower with any indication of the types of circumstances FmHA will consider to be beyond the borrower's control, nor how long a temporary inability to pay can last, nor how living standards are to be determined. The form also fails to provide the borrower with notice of any of the various non-statutory conditions of deferral eligibility the agency has imposed by regulation. Form 1924-14 also fails to adequately describe the criteria for eligibility for the other loan servicing options available, nor does it describe how the borrwers' terms or rates of interest may change with rescheduling and reamortization. It does not describe how long a loan can be rescheduled or reamortized and does not describe how interest rates can be reduced through these actions.

This passage contains only some of the many additions proposed by plaintiffs. If these proposals were adopted, the result would be a booklet of intimidating length and technical detail, which would not likely be read, and even less likely understood, by many members of the plaintiff class. This court finds that the scheme of defendants, in which borrowers are given general notice of what kinds of options are available and directed to contact their county office with questions concerning them, is a constitutionally permissable, and even preferable, alternative. This court notes that FmHA incorporated many of the changes suggested in the comment submitted by the Center for Rural Affairs in its final versions of the forms.

Plaintiffs have, however, identified several constitutional infirmities in the notice given by the forms. The three forms are sent together. FmHA 1924-25 notifies the borrower of the default and the impending adverse action, and directs the borrowers attention to various aspects of FmHA 1924-26. FmHA 1924-26 presents the borrower with a series of choices of which, if any, loan servicing options the borrower wishes to make use of. The form must be completed and returned within thirty days. FmHA 1924-14 provides further brief descriptions of the loan servicing options listed on FmHA 1924-26, and of some of the responsibilities of the borrower. It also states that the borrower can obtain additional information from the FmHA county supervisor. Forms FmHA 1924-14 and 1924-25 are notice forms, but FmHA 1924-26 is both a notice form and something more. Because the choices made by the borrower on this form are binding, and act to foreclose other options, this form is actually the first step in the application of the adverse action. The completion of, or the failure to complete, FmHA 1924-26 can be the decisive act in the liquidation process. Because of the potential impact of this form, and particularly because of the number and complexity of the options available, the notice given borrowers must be both clear and comprehensive. The weak link in the present notice system is the reference of borrowers to the county offices for further information.

Plaintiffs have submitted uncontradicted evidence that borrowers who seek additional information from county FmHA offices pursuant to the statement on FmHA 1924-26 receive inadequate or misleading information, or no information at all. They assert that FmHA has taken no substantial steps to ensure that FmHA county agents have current, uniform, comprehensive information with which to respond to requests for information. Further, it is possible that many borrowers will not read to the bottom of FmHA 1924-26, which is an only slightly helpful document.

Form FmHA 1924-26 must have added to it the statement, prominently displayed, that complete explanations of the various options listed on the form, and the implications or effects of choosing or rejecting them, are available at the local county FmHA office. FmHA must formulate and distribute to all of its county offices uniform and comprehensive, but also clear and readable, explanations of each of the options listed on FmHA 1924-26, including, but not necessarily limited to, the eligibility requirements, terms, restrictions, and benefits of each option, and the effect that choosing one option would have in foreclosing the availability of other options. These explanations will aid FmHA personnel in responding to borrowers' requests for information. These explanations must also be promptly provided to borrowers upon request, in lieu of or in addition to any oral explanation, at the option of the borrower. Each explanation must be clearly labelled to identify which option on FmHA 1924-26 it applies to. Complete sets of the explanations, serving in sum as a comprehensive guide to the completion of FmHA 1924-26, must be promptly provided to borrowers upon request. By way of example, the relevant explanations would include the availability of the various types of "debt settlement."

The combination of the concise information presented in the three forms mailed to the borrowers with the comprehensive supplementary information available upon request will provide due process notice well tailored to the unique circumstances of this case.

Plaintiffs have also identified a flaw in the mechanics of FmHA 1924-26. The form orders borrowers to choose options from any one, but only one, of four categories. A single FmHA 1924-26 form, however, can cover more than one loan, or more than one basis for adverse action on a single loan. As a result a borrower who, for example, is having a loan accelerated because of a default on the payements due and also because of an improper disposition of security, would confront a dilemma. The borrower would not be allowed to apply for loan servicing to cure the default and to also make restitution to cure the improper disposition. Defendants must redraft FmHA 1924-26 to allow borrowers to make a separate election of options for each loan accelerated and for each reason given for each proposed adverse action. Providing a separate form for each loan or basis for adverse action would be one possible solution.

The above flaw in FmHA 1924-26 is not an instance of insufficient notice. It is instead a denial of due process in the form of an arbitrary deprivation of a protected property right. FmHA 1924-26 operates, in some circumstances, to deprive borrowers of protected interests without the opportunity for a hearing on the merits. The due process clause requires fundamental fairness in the operation of proceedings to deprive citizens of protected interests. Lassiter v. Department of Social Services of Durham County, N.C., 452 U.S. 18, 24 (1981) reh. den. 453 U.S. 927. The effect of FmHA 1924-26 is fundamentally unfair, and so the form must be altered to provide all borrowers with the full process due them.

Therefore IT IS ORDERED:

Plaintiffs' claims for relief numbers one, two, three, four, five, six, eight, nine, eleven, twelve, thirteen, and fourteen are hereby dismissed with prejudice to the bringing of another action for the same cause or causes.

Plaintiffs' seventh claim for relief is hereby dismissed with prejudice to the bringing of another action for the same cause or causes, except that it is not dismissed so far as it challenges the adoption of 7 C.F.R. § 1951.44(b)(5) for failure by FmHA to include with the publication of the rule a concise general statement of the basis and purpose of the rule.

Defendants are hereby ordered to submit to this court within thirty days of the filing of this order a concise general statement of the true basis and purpose of 7 C.F.R. § 1951.44(b)(5) as contemplated at the time the rule was promulgated.

Defendants are hereby ordered to amend form FmHA 1924-26 by adding to it, prominently displayed, a statement that explanations of the various options listed on the form, and the effect of choosing one of them, are available at the county FmHA office.

Defendants are hereby ordered to file with this court, and deliver to counsel for plaintiffs, within thirty days after the entry of this order, comprehensive, but also clear and readable, explanations of each of the options listed on FmHA 1924-26, including, but not necessarily limited to, the eligibility requirements, terms, restrictions, and benefits of each option, and the effect that choosing that option would have in foreclosing the availability of other options. Plaintiffs will have twenty days from the date of the filing of the explanations to file with this court, and deliver to counsel for defendants, any suggestions regarding the content of the explanations.

Defendants are hereby ordered to amend form FmHA 1924-26 to allow borrowers to make a separate election of options for each loan accelerated and for each reason given for each proposed action.

Dated this 7 day of May, 1987, at Bismarck, North Dakota.

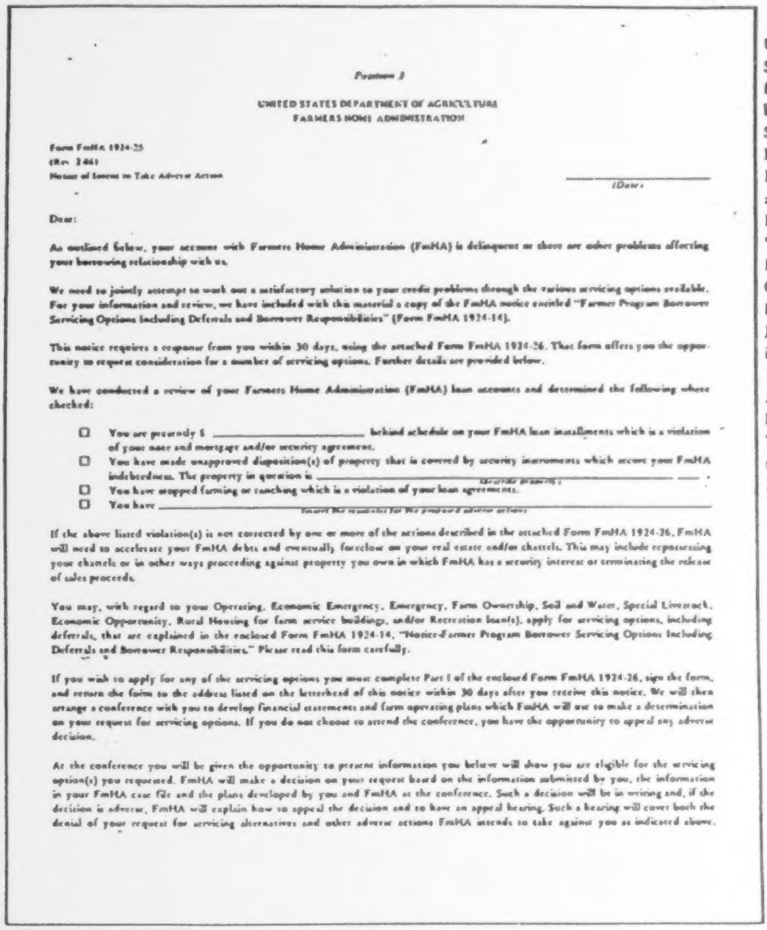
Bruce M Van Sickle
Bruce M. Van Sickle, Judge
United States District Court

NOTICE OF ENTRY
Take notice that the original of this copy was entered in the office of the clerk of the United States District Court for the District of North Dakota on the 7 day of May 1987.
EDWARD J. KLECKER, CLERK

By: Deborah Thomsen
Deputy

EXHIBIT 1

FORMS MANUAL INSERT **FORM FmHA 1924-25**



Position 3

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

Form FmHA 1924-25
(Rev. 2-86)
Notice of Intent to Take Adverse Action

____
(Date)

Dear:

As outlined below, your account with Farmers Home Administration (FmHA) is delinquent or there are other problems affecting your borrowing relationship with us.

We need to jointly attempt to work out a satisfactory solution to your credit problems through the various servicing options available. For your information and review, we have included with this material a copy of the FmHA notice entitled "Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities" (Form FmHA 1924-14).

This notice requires a response from you within 30 days, using the attached Form FmHA 1924-26. That form offers you the opportunity to request consideration for a number of servicing options. Further details are provided below.

We have conducted a review of your Farmers Home Administration (FmHA) loan accounts and determined the following where checked:

- ☐ You are presently $ ________________ behind schedule on your FmHA loan installments which is a violation of your note and mortgage and/or security agreement.
- ☐ You have made unapproved disposition(s) of property that is covered by security instruments which secure your FmHA indebtedness. The property in question is ____________________.
- ☐ You have stopped farming or ranching which is a violation of your loan agreements.
- ☐ You have ____________________________

If the above listed violation(s) is not corrected by one or more of the actions described in the attached Form FmHA 1924-26, FmHA will need to accelerate your FmHA debts and eventually foreclose on your real estate and/or chattels. This may include repossessing your chattels or in other ways proceeding against property you own in which FmHA has a security interest or terminating the release of sales proceeds.

You may, with regard to your Operating, Economic Emergency, Emergency, Farm Ownership, Soil and Water, Special Livestock, Economic Opportunity, Rural Housing for farm service buildings, and/or Recreation loan(s), apply for servicing options, including deferrals, that are explained in the enclosed Form FmHA 1924-14, "Notice-Farmer Program Borrower Servicing Options Including Deferrals and Borrower Responsibilities." Please read this form carefully.

If you wish to apply for any of the servicing options you must complete Part I of the enclosed Form FmHA 1924-26, sign the form, and return the form to the address listed on the letterhead of this notice within 30 days after you receive this notice. We will then arrange a conference with you to develop financial statements and farm operating plans which FmHA will use to make a determination on your request for servicing options. If you do not choose to attend the conference, you have the opportunity to appeal any adverse decision.

At the conference you will be given the opportunity to present information you believe will show you are eligible for the servicing option(s) you requested. FmHA will make a decision on your request based on the information submitted by you, the information in your FmHA case file and the plans developed by you and FmHA at the conference. Such a decision will be in writing and, if the decision is adverse, FmHA will explain how to appeal the decision and to have an appeal hearing. Such a hearing will cover both the denial of your request for servicing alternatives and other adverse actions FmHA intends to take against you as indicated above.

Used by the County Supervisor to notify farmer program borrowers with OL, FO, SW, RL, EM, EE, SL, EO, or RHF Loans of FmHA's intent to take adverse action. Form FmHA 1924-14, "Notice-Farmer Program Borrower Servicing Options, Including Deferrals, and Borrower Responsibilities," and Form 1924-26, "Borrower's Acknowledgement of Notice of Intent to Take Adverse Action," must be sent with Form FmHA 1924-25.

(see reverse)

PROCEDURE FOR PREPARATION : FmHA Instructions 1900-B, 1924-B, 1950-C, 1962-A and 1965-A.

PREPARED BY : County Supervisor.

NUMBER OF COPIES : Original and one.

SIGNATURE REQUIRED : County Supervisor.

DISTRIBUTION OF COPIES : Original to Borrower(s), and copy retained in County Office file.

-3- (FMI - Form FmHA 1924-25)

REVERSE OF FORM FmHA 1924-25

If you do not wish to request servicing options you have the opportunity for a conference and to appeal the adverse action(s) FmHA intends to take. In this case, you should complete only Part II of Form FmHA 1924-26, sign the form and return it to the address shown in the letterhead of this notice within 30 days after you receive this notice. You may appear in person, with or without an attorney or other representative, to present your information. The hearing officer will be an FmHA employee who has not been previously involved in your case. The hearing officer will arrange a mutually convenient time and place for the appeal hearing.

Several methods of curing defaults or liquidating your FmHA loan accounts are available. If you prefer to use one of these methods listed in Part III (Curing Defaults) or Part IV (Liquidation Action) of Form FmHA 1924-26, check the appropriate box, sign the form and return it to the address listed in the letterhead of this notice within 30 days of receipt of this notice.

Please note that Form FmHA 1924-26 must be postmarked within 30 days of the day you received this notice. If you fail to respond to this notice by completing, signing and returning Form FmHA 1924-26 in the prescribed time, FmHA will need to accelerate your FmHA debts and eventually foreclose on your real estate and/or chattels without further notice or right of administrative appeal by you.

(The following paragraph applies for individual borrowers only)

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age *(provided that the applicant has the capacity to enter into a binding contract)*; because all or part of the applicant's income is derived from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Sincerely,

____

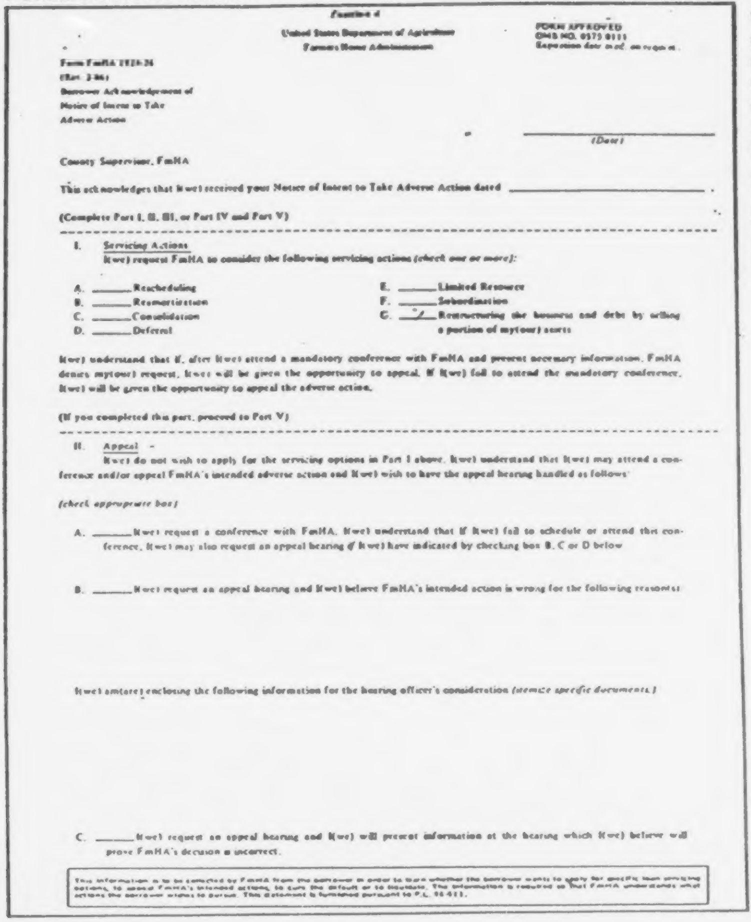
FmHA County Supervisor

Enclosures:
Form FmHA 1924-14
Form FmHA 1924-26

FmHA 1924-25
(REVERSE)

EXHIBIT 2

FORMS MANUAL INSERT **FORM FmHA 1924-26**



Position 4

United States Department of Agriculture
Farmers Home Administration

FORM APPROVED
OMB NO. 0575-0111
Expiration date [illegible]

Form FmHA 1924-26
(Rev. 2-86)
Borrower Acknowledgement of
Notice of Intent to Take
Adverse Action

____
(Date)

County Supervisor, FmHA

This acknowledges that I(we) received your Notice of Intent to Take Adverse Action dated ________________.

(Complete Part I, II, III, or Part IV and Part V)

I. Servicing Actions
I(we) request FmHA to consider the following servicing actions *(check one or more)*:

A. ______ Rescheduling
B. ______ Reamortization
C. ______ Consolidation
D. ______ Deferral
E. ______ Limited Resource
F. ______ Subordination
G. __✓__ Restructuring the business and debt by selling a portion of my(our) assets

I(we) understand that if, after I(we) attend a mandatory conference with FmHA and present necessary information, FmHA denies my(our) request, I(we) will be given the opportunity to appeal. If I(we) fail to attend the mandatory conference, I(we) will be given the opportunity to appeal the adverse action.

(If you completed this part, proceed to Part V)

II. Appeal -
I(we) do not wish to apply for the servicing options in Part I above. I(we) understand that I(we) may attend a conference and/or appeal FmHA's intended adverse action and I(we) wish to have the appeal hearing handled as follows:

(check appropriate box)

A. ______ I(we) request a conference with FmHA. I(we) understand that if I(we) fail to schedule or attend this conference, I(we) may also request an appeal hearing if I(we) have indicated by checking box B, C or D below.

B. ______ I(we) request an appeal hearing and I(we) believe FmHA's intended action is wrong for the following reason(s):

I(we) am(are) enclosing the following information for the hearing officer's consideration *(itemize specific documents)*:

C. ______ I(we) request an appeal hearing and I(we) will present information at the hearing which I(we) believe will prove FmHA's decision is incorrect.

This information is to be collected by FmHA from the borrower in order to learn whether the borrower wants to apply for specific loan servicing options, to appeal FmHA's intended actions, to cure the default or to liquidate. The information is required so that FmHA understands what actions the borrower wishes to pursue. This statement is furnished pursuant to P.L. 96-511.

Used by the borrower to request servicing options, request a hearing or to waive appeal rights after receiving Form FmHA 1924-25, "Notice of Intent to Take Adverse Action." Form FmHA 1924-26 will be sent as an attachment any time Form FmHA 1924-25 is sent to the borrower.

PROCEDURE FOR PREPARATION : FmHA Instructions 1900-B, 1924-B, 1950-C, 1962-A, and 1965-A.

PREPARED BY : Borrower.

NUMBER OF COPIES : Original only.

SIGNATURE REQUIRED : Borrower(s).

DISTRIBUTION OF COPIES : Original returned by Borrower(s) and retained in County Office file.

REVERSE OF FORM FmHA 1924-26

D. ______ I(we) will not attend an appeal hearing but request the hearing officer to review the existing written record, and based on the review, determine whether FmHA's decision is correct.

E. ______ I(we) do not want to appeal the intended action and waive my(our) right to do so.

(If you completed this part, proceed to Part V)

III. Curing Defaults. *(Complete this only if you have checked none of the boxes in I or II above).*

I(we) do not wish to request a servicing option in Part I or to appeal the intended adverse action as allowed in Part II. I(we) wish to take the following action to correct the security agreement violations noted in Form FmHA 1924-25 and request a conference with you to discuss this action.

A. ______ Pay my(our) delinquent loan accounts current.

B. ______ Make restitution to FmHA for unauthorized disposition of security.

I will take this action within 60 days of the date this Form FmHA 1924-26 is postmarked. If I cannot accomplish this action within the 60 days, FmHA will proceed to take adverse action against me, and I will not be allowed to appeal the adverse action.

(If you completed this part, proceed to Part V)

IV. Liquidation Actions. *(Complete this only if you have checked none of the boxes in I, II, or III above).*

I(we) do not wish to request a servicing option in Part I, appeal the adverse action as permitted in Part II, or correct the security agreement violations as permitted in Part III. I(we) wish to take the following action to liquidate my (our) FmHA accounts and request a conference with you to discuss this action.

A. ______ Sell my (our) security for cash.

B. ______ Convey my (our) security to FmHA.

C. ______ Transfer my (our) security to someone who will assume the FmHA debt.

D. ______ Refinance my (our) debt with another lender.

I will take this action within 120 days of the date this Form FmHA 1924-26 is postmarked. I understand that I may be considered for FmHA debt settlement should sale, transfer, or conveyance of secured property fail to satisfy my(our) entire FmHA debt. I understand that if I cannot accomplish this action within 120 days, FmHA will proceed to take adverse action and I will not be allowed to appeal that action.

(Proceed to Part V)

V. Certification

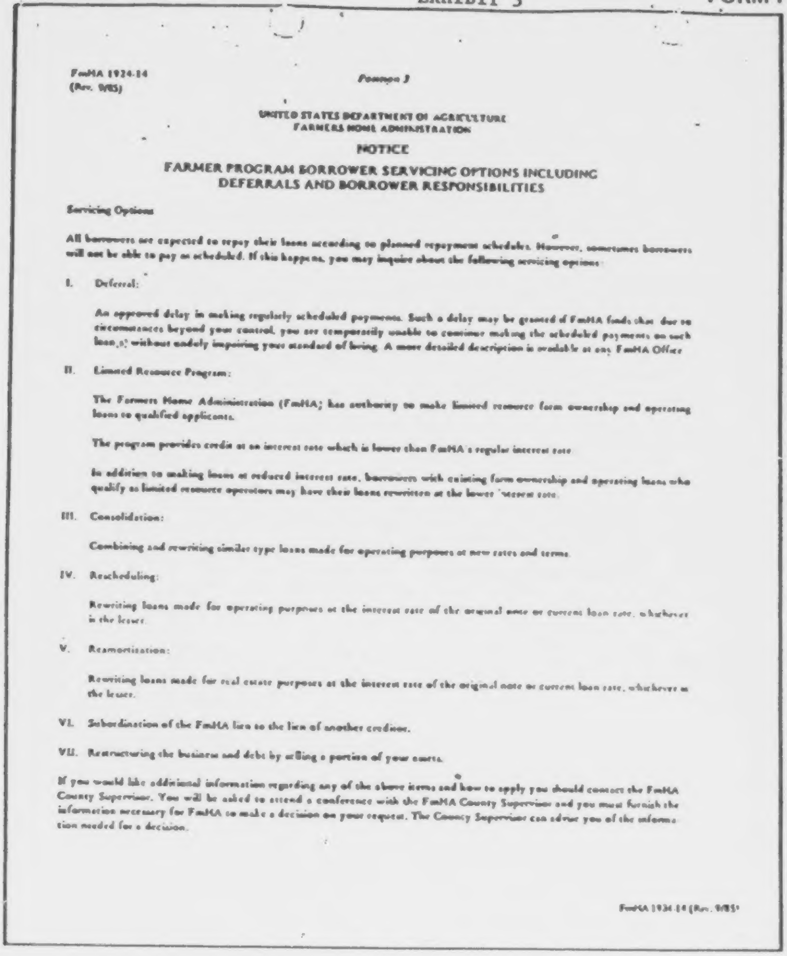
I(we) hereby request one of the above actions. I(we) understand that if I(we) do not request any of the actions in Parts I, III, or IV or desire an appeal hearing in Part II, FmHA may proceed to take immediate action on my(our) loan accounts.

Sincerely,

____
(Signature of borrower)

____
(Signature of borrower)

FmHA 1924-26
(REVERSE)



FmHA 1924-14
(Rev. 9/85)

Position 3

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION

NOTICE

FARMER PROGRAM BORROWER SERVICING OPTIONS INCLUDING
DEFERRALS AND BORROWER RESPONSIBILITIES

Servicing Options

All borrowers are expected to repay their loans according to planned repayment schedules. However, sometimes borrowers will not be able to pay as scheduled. If this happens, you may inquire about the following servicing options:

I. Deferral:

An approved delay in making regularly scheduled payments. Such a delay may be granted if FmHA finds that due to circumstances beyond your control, you are temporarily unable to continue making the scheduled payments on such loan(s) without unduly impairing your standard of living. A more detailed description is available at any FmHA Office.

II. Limited Resource Program:

The Farmers Home Administration (FmHA) has authority to make limited resource farm ownership and operating loans to qualified applicants.

The program provides credit at an interest rate which is lower than FmHA's regular interest rate.

In addition to making loans at reduced interest rate, borrowers with existing farm ownership and operating loans who qualify as limited resource operators may have their loans rewritten at the lower interest rate.

III. Consolidation:

Combining and rewriting similar type loans made for operating purposes at new rates and terms.

IV. Rescheduling:

Rewriting loans made for operating purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

V. Reamortization:

Rewriting loans made for real estate purposes at the interest rate of the original note or current loan rate, whichever is the lesser.

VI. Subordination of the FmHA lien to the lien of another creditor.

VII. Restructuring the business and debt by selling a portion of your assets.

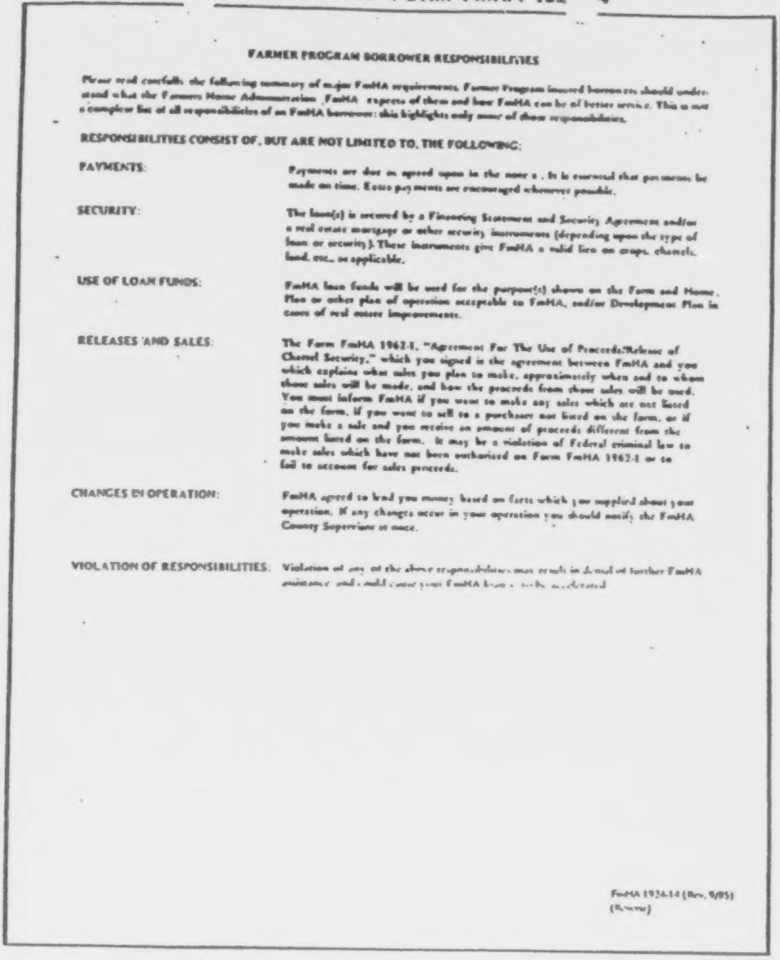
If you would like additional information regarding any of the above items and how to apply you should contact the FmHA County Supervisor. You will be asked to attend a conference with the FmHA County Supervisor and you must furnish the information necessary for FmHA to make a decision on your request. The County Supervisor can advise you of the information needed for a decision.

FmHA 1924-14 (Rev. 9/85)

Used by County Supervisor in the following cases: (1) When the borrower receives an initial or subsequent loan. In these cases, signature lines and date line should be typed on the last page and the form signed by the County Supervisor and the borrowers. (2) When the borrower is sent Form FmHA 1924-25, "Notice of Intent to Take Adverse Action." Form FmHA 1924-14 must be attached to Form FmHA 1924-25 when sent to the borrower. (3) When the borrower intends to sell, voluntarily convey or transfer security. (4) In November of each year the County Supervisor will send Form FmHA 1924-14 to all FO, SW, OL, EM, EE, RL, SL, EO and RHF borrowers. (5) Before the borrower signs an accelerated repayment agreement. In items (2), (3), (4), (5) and (6), the County Supervisor will date and initial the County Office file copy the day the form is sent.

PROCEDURE FOR PREPARATION	: FmHA Instructions 1910-A, 1924-B, 1950-C, 1955-A, 1962-A, and 1965-A.
PREPARED BY	: County Supervisor.
NUMBER OF COPIES	: Original and one.
SIGNATURES REQUIRED	: Borrower(s) and County Supervisor's at initial and subsequent loan closings. No signatures required at other times.
DISTRIBUTION OF COPIES	: Signed original only retained in County Office file. Copy to borrower.

REVERSE OF FORM FmHA 1924-14



FARMER PROGRAM BORROWER RESPONSIBILITIES

Please read carefully the following summary of major FmHA requirements. Farmer Program insured borrowers should understand what the Farmers Home Administration (FmHA) expects of them and how FmHA can be of better service. This is not a complete list of all responsibilities of an FmHA borrower: this highlights only some of those responsibilities.

RESPONSIBILITIES CONSIST OF, BUT ARE NOT LIMITED TO, THE FOLLOWING:

PAYMENTS:	Payments are due as agreed upon in the note(s). It is essential that payments be made on time. Extra payments are encouraged whenever possible.
SECURITY:	The loan(s) is secured by a Financing Statement and Security Agreement and/or a real estate mortgage or other security instruments (depending upon the type of loan or security). These instruments give FmHA a valid lien on crops, chattels, land, etc., as applicable.
USE OF LOAN FUNDS:	FmHA loan funds will be used for the purpose(s) shown on the Farm and Home Plan or other plan of operation acceptable to FmHA, and/or Development Plan in cases of real estate improvements.
RELEASES AND SALES:	The Form FmHA 1962-1, "Agreement For The Use of Proceeds/Release of Chattel Security," which you signed is the agreement between FmHA and you which explains what sales you plan to make, approximately when and to whom those sales will be made, and how the proceeds from those sales will be used. You must inform FmHA if you want to make any sales which are not listed on the form, if you want to sell to a purchaser not listed on the form, or if you make a sale and you receive an amount of proceeds different from the amount listed on the form. It may be a violation of Federal criminal law to make sales which have not been authorized on Form FmHA 1962-1 or to fail to account for sales proceeds.
CHANGES IN OPERATION:	FmHA agreed to lend you money based on facts which you supplied about your operation. If any changes occur in your operation you should notify the FmHA County Supervisor at once.
VIOLATION OF RESPONSIBILITIES:	Violation of any of the above responsibilities may result in denial of further FmHA assistance and could cause your FmHA loan(s) to be accelerated.

FmHA 1924-14 (Rev. 9/85)
(Reverse)

JUN 9 1987

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION

FILED
JUN 2 1987
EDWARD J. KLECKER, CLERK
U.S. DISTRICT COURT-NORTH DAKOTA

DWIGHT COLEMAN, et al.,

Plaintiffs,

vs.

JOHN R. BLOCK,
Secretary ofAgriculture, et al.,

Defendants.

Civil No. A1-83-47

MEMORANDUM and ORDER

Plaintiffs' supplemental complaint was filed on January 24, 1986. It presented fourteen claims for relief challenging various aspects of the new regulations and forms promulgated by FmHA to be used in taking adverse action against its borrowers. These new regulations and forms were adopted by FmHA in November, 1985, in order to comply with the terms of this court's preliminary and permanent injunctions in this case. See Coleman v. Block, 580 F.Supp. 192 (D.N.D. 1983) and Coleman v. Block, 580 F. Supp. 194 (D.N.D. 1984). Defendants brought a motion for an order granting a summary judgment of dismissal of thirteen of the claims for relief, filed June 16, 1986. On May 7, 1987, this court entered an order dismissing eleven of the claims for relief, and granting in part and dismissing in part the remaining two. One of these two involved a procedural error and is not now at issue.

The other of the two, the tenth claim for relief, asserted that the forms used by FmHA to notify borrowers of impending adverse actions on their loans violated the due process clause of the Fifth Amendment to the United States Constitution in a number of ways. This court, in its order of May 7, 1987, found that two aspects of the notice procedure constituted denials of due process. Defendants were directed to take three actions that would begin the process of curing the flaws in the notice procedure.

Plaintiffs brought motions for [illegible]porary restraining order and for an order to show cause why a preliminary injunc[illegible] should not be issued on May 12, 1987. By these motions plaintiffs sought sweeping [illegible]tive relief, which would have effectively undone all the adverse actions ta[illegible]wers by FmHA using the defective forms. These motions were base[illegible]nding in the May 7 order that the forms were in violation of the C[illegible] May 15, 1987, this court entered an order denying the motion for a temporary restraining order and requiring defendants to show cause why a preliminary injunction should not be entered. On that same day, plaintiffs brought an alternative motion to have the order of May 7 amended to accomplish the same retroactive relief sought by the previous two motions. The hearing on the order to show cause and on the motion to amend the order was held on May 21, 1987.

This court deliberately chose not to grant retroactive relief in its order of May 7, and instead entered an order aimed only at a prompt cure of the flaws in the notice process. This course of action was chosen after consideration of the mixed beneficial and detrimental impact retroactive relief would have on the plaintiff class, and, to a lesser extent, its disruption of FmHA's operations. Plaintiffs now seek to persuade this court that retroactive relief would lead to greater benefits and fewer harms to the class than this court had previously contemplated; and that this court's decision not to grant retroactive relief was therefore erroneous. The appropriate vehicle for this attempt is the motion to amend the verdict brought pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. A preliminary injunction will not be issued.

This court now concludes that its decision not to grant any retroactive relief was an error. When the order of May 7 was drafted, this court did not give sufficient consideration to the fact that the FmHA borrowers who have received the faulty notice forms can be grouped into several categories defined by the stages of the adverse action process. This failure resulted in some borrowers not receiving the appropriate remedy for FmHA's violation of their constitutional rights to due process. Retroactive relief will have a different impact on borrowers in the early stages of the process than it will on borrowers in the later stages of the process. The standards for application of retroactive relief are most properly applied in turn to each of these categories of borrowers, rather than to all the notified borrowers as an undifferentiated group.

The three part standard governing the application of retroactive relief was enunciated by the United States Supreme Court in Chevron Oil Co. v. Huson, 404 U.S. 97 (1971).

> First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, see, e.g., Hanover Shoe v. United Shoe Machinery Corp., supra, at 496, or by deciding an issue of first impression whose resolution was not clearly foreshadowed, see, e.g., Allen v. State Board of Elections, supra, at 572. Second, it has been stressed that "we must ... weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation." Linkletter v. Walker, supra, at 629. Finally, we have weighed the inequity imposed by retroactive application, for "[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding on nonretroactivity." Cipriano v.City of Houma, supra, at 706.

404 U.S. at 106-107.

As is often true in cases involving due process issues, there was no clear precedent rendering the result in this case obvious or predictable with certainty. Further, this court had previously ruled in its order denying a preliminary injunction in this case that plaintiffs' due process challenge to the forms was not likely to succeed on its merits. Coleman v. Block, 632 F. Supp. 1005 (D.N.D. 1986). This preliminary ruling was not, as defendants argue, binding precedent that was overruled by this court's order of May 7; and they had no legal basis for assuming that it foreclosed the possibility of a finding of unconstitutionality. It did, however, contribute to the uncertainty inherent in any due process claim of first impression, thus satisfying the first element of the three part standard.

Application of the balancing tests mandated by the second and third elements of the standard must take into consideration the different circumstances of the borrowers who are in different stages of the adverse action process. The borrowers affected can be divided into three broad groups. The first group consists of those borrowers who have received the faulty notice forms, but who have not yet had their loans accelerated by FmHA. It appears that there are approximately 65,000 borrowers in this category. These borrowers are in varous stages of pre-acceleration negotiations, hearings and appeals. The second group consists of those borrowers who have received the faulty forms and have subsequently had their loans accelerated, and so are ineligible for security releases for farm and family expenses, but who have not yet lost the title to their property. It appears that there are approximately 13,000 borrowers in this category. This group includes borrowers who have had foreclosure actions initiated against them, but who still hold title to their property. The third group consists of those borrowers who have received the faulty forms and have subsequently lost the title to their former property, regardless of whether they remain on the farm. There may be approximately 1,000 borrowers in this category. This group includes borrowers who have lost the title to their property through any transaction or legal process.

The purpose of the May 7 order was to ensure that class members would receive the full process due them in the course of adverse actions taken against them by FmHA. This purpose would be furthered by requiring that FmHA renotify the borrowers in the first of the three categories described above. The 65,000 borrowers in that group comprise a pool of borrowers who received defective notice that is sufficient to occupy FmHA's acceleration and foreclosure resources for some time to come. Unless a new notice is given, the impact of the May 7 order will be effectively suspended until that pool is depleted. Unless retroactive relief is extended to them, the class members in the first group will be denied any effective relief by the May 7 order.

Few, if any, of the borrowers in this first group would be adversely affected by a grant of retroactive relief to them. Any individual who did not wish to take advantage of the opportunity to begin the pre-acceleration process anew could so indicate in response to the new notice of intent to take adverse action. Renotification of these borrowers will burden FmHA's operation and budget, but this burden is outweighed by the benefit of providing constitutionally sound notice to this large pool of borrowers who have not yet had their operations seriously disrupted by the flawed adverse action process. This court will enter an order: (1) barring FmHA from accelerating the loan of any class member of the first group as of May 7, 1987, without first providing the class member with the set of notice forms to be developed in accordance with this court's order of May 7, 1987; and (2) declaring that the notices, and procedures taken subsequent to the prior defective notices, as to the class members in the first group, are void.

The purpose of the May 7 order would also be advanced by extending retroactive relief to the third group of borrowers described above. The inequitable results of such relief would, however, outweigh the benefits. This court will not reopen the wounds of those individuals for whom the legal process has been completed. As this court observed in its order of May 7 when some bad event has come to an end, there is much to be said for leaving the peace undisturbed, so that all concerned can proceed with their lives without further turmoil and anxiety, and put the past behind them. Those individuals who have the desire to renew their struggles, and believe they can prove actual damages resulting from the constitutional infirmities of the notice given them are, of course, free to pursue litigation in their local courts.

This court is troubled by the problems posed by those borrowers who fall into the second group described above. Applying the second and third tests of the Chevron standard to the borrowers in the first and third groups yields straightforward conclusions regarding the propriety of retroactive relief for the members of those groups. There are two decisive moments in the adverse action process following notification. The first is acceleration of the loan. Upon acceleration, the borrower loses the statutory entitlement to security releases for farm operating and family living expenses, and is subject to the confiscation of other government payments by FmHA. The second is the loss of title to the security. At that time the borrower loses the legal right to remain on the land and operate it as a farm. The borrowers in the first group have not reached either of these turning points. Renotifying these borrowers will not involve the reversal of any prior loss of financial or legal interests, and will not raise the difficult issue of monetary reparations. The inconvenience to FmHA of having to do again the various hearings, appeals, and determinations that some of these borrowers have undergone is a fair price to pay for having this large pool of class members processed in an entirely constitutional manner. FmHA can implement this administrative fresh start internally.

It is equally clear to this court that the Chevron standard's two balancing tests prohibit the extension of retroactive relief to the borrowers in the third group. Even putting aside the very serious difficulties involved in reversing these borrower's loss of financial and legal interests, the uncertain additional furtherance of the goals of the May 7 order is far outweighed by the potential disruption of the lives of many of these borrowers. This court will not unilaterally decide for these individuals that they should be pulled back to the beginning of a difficult ordeal, and will instead leave them to evaluate their own legal interests and personal desires.

For the second group, by contrast, the tipping of the scales is a finer matter. These borrowers have suffered the effects of having their living and operating releases terminated, and in some cases, of having their other government payments confiscated. This court, however, cannot know how many of these borrowers have suffered actual damages as a result of the constitutional flaws in the notice process. Some of the borrowers may have been fully informed of the various options open to them despite the flaws. Some may not have been adversely affected by the binding choices required by FmHA Form 1924-26. Some may have been in such serious financial difficulty that no available program could keep them on the farm. The number of borrowers in the second group who would not have been accelerated had the notice process not been flawed is not known.

Against this weighty but uncertain interest must be balanced the heavy financial cost and disruption of activity that reversing the acceleration of these borrower's loans would inflict on FmHA, and the resulting impairment of its ability to serve the members of the class. It is also possible that at this stage of the adverse action process there are borrowers who would prefer not to have this court return them to square one.

This court concludes that the remedy for the borrowers in this group must be tailored to assist the individuals actually harmed by the unconstitutional aspects of the notice of intent to take adverse action. The price of a blanket reversal of acceleration is too high to pay when we sweep those who have not been actually harmed along with those who have. Accordingly, this court will enter an order enjoining FmHA from foreclosing on the loans of the borrowers in the second group. This injunction will terminate thirty (30) days after this court determines that the corrected notice forms and explanations of options mandated by the May 7 order are available in all FmHA offices. This injunction will not require FmHA to reverse the acceleration of the loans of the members of the second group, or to restore security releases or refrain from confiscating government payments. It will maintain the status quo of May 7, 1987, until the accelerated borrowers can make a determination of whether to proceed with their own actions against FmHA. This will allow those borrowers who did not in fact learn of the options available to them that might have benefitted them, or who had a potentially beneficial option denied to them by the binding nature of the defective form 1924-26 election, and who would not have otherwise been accelerated, to recover for that harm. This court recognizes that in the absence of the security releases and other government payments many of these borrowers will suffer great hardship, but this remedy is as far as this court is permitted to go under the Chevron balancing tests.

IT IS ORDERED:

1. As to any class member who received the defective notice of intent to take adverse action, but whose loan or loans had not been accelerated before May 7, 1987, FmHA is enjoined from accelerating such loans without first providing to that class member a set of the corrected notice forms required by this court's order of May 7, 1987, and without making available to that class member services as provided for in those corrected forms.

2. As to any class member whose loan or loans were accelerated on or between May 7, 1987, and the date of the entry of this order, FmHA is hereby ordered to reverse such acceleration, and treat such class member as provided in the paragraph numbered 1, above.

4. FmHA is hereby enjoined from initiating foreclosure or proceeding further with foreclosure or execution on any loan accelerated before May 7, 1987, until 30 days after

the court determines that the corrected forms and explanations required by this court's order of May 7, 1987, are available in FmHA county offices.

Dated at Fargo, North Dakota, this 2nd day of June, 1987.

Bruce M Van Sickle
BRUCE M. VAN SICKLE, JUDGE
UNITED STATES DISTRICT COURT

NOTICE OF ENTRY
Take notice that the original of this copy was entered in the office of the clerk of the United States District Court for the District of North Dakota on the 2nd day of June 19 87
EDWARD J. KLECKER, CLERK
By: Deputy

Senator CONRAD. Mr. Severens.

STATEMENT OF EUGENE SEVERENS, CENTER FOR RURAL AFFAIRS, WALTHILL, NE

Mr. SEVERENS. Thank you very much, Mr. Chairman. I work for the Center for Rural Affairs in Walthill, Nebraska. The Center was formed in 1973 by rural Nebraskans concerned about the role of public policy in the decline of family farms and rural communities. We would like to thank the chairman and other members of this committee for holding hearings on the role of Farmers Home Administration [FmHA]. The Agency is the main instrument of Federal agricultural credit policy, and its policy and commitment are needed today more than ever. I say, "today more than ever," because we are entering the rebuilding stage of the farm crisis. The excess debt attached to farming assets has been painfully squeezed out during the liquidation stage of the past 4 or 5 years, and farming assets, especially farmland, is now available for the first time in years at affordable prices.

As I stated to this committee before at field hearings in Omaha last January, we believe that any Federal policy that affects access to agricultural credit must be analyzed from the standpoint of—how will this policy alter competitive positions of farmers within agriculture? Or in today's rebuilding stage, the policy question becomes: how will this policy alter the competitive positions of farmers—or other land buyers—to buy farmland?

We need to remind ourselves that farmers are not a homogeneous group. If Federal actions, like FmHA policies, the secondary market, or Farm Credit System [FCS] bailouts, differentially affect access to agricultural credit, Congress will, by definition, be helping one group of farmers—or land buyers—at the expense of another. This, of course, is not a new revelation, but is the historic rationale for the creation of FmHA and Federal intervention in agricultural credit: to provide special access to credit for a specific subset of farmers. That longstanding, bipartisan definition of that subset has always been: beginning and modest, low-equity farms that have the ability to become efficient family size operations but are unable to get credit elsewhere. I would like to spend the rest of my time discussing how Federal credit policies, especially FmHA's, affect family size farmers' ability to participate in the coming rebuilding of agriculture. In particular, my testimony will focus on how those credit policies adversely affect family size farmers' ability to control access to farmland.

FEDERAL POLICY AND THE RESALE OF LENDER INVENTORY FARMLAND

Our organization believes that the coming round of farmland sales is going to be an historic event that will shape the future ownership and control of American farmland and, by implication, the future of family farm agriculture and the concept of the owner-operator. Until recently, much of the potentially available farmland has been voluntarily warehoused by agricultural lenders, including FmHA. As we know, farmland sales started picking up, and some FCS banks as well as FmHA have begun selling farmland. Several proposed changes in Federal agricultural credit policies are going to have a profound impact on those sales as those policies change the competitive positions of the would-be buyers of that farmland. Some of those major policies include: the manner in which FmHA sells its farmland inventory; the availability of FmHA FO funds for farmland purchases; the ability of FmHA borrowers to settle debts by partial liquidation and retain a minimum farming base from which they too can participate in the rebuilding; the continued availability and success of chapter 12 bankruptcy to allow the retention of a minimum farming base from which those farmers too can participate in the rebuilding; the continued development of bankruptcy alternatives, like mandatory mediation, to promote fair, realistic debt settlement procedures that prevent arbitrary, unnecessary and inefficient termination of family farming bases; the sale of FCS inventory as a part of a broader FCS bailout is another policy consideration; and finally the creation of a secondary market for farm mortgages.

This is just a partial list of the types of policies that Congress will be dealing with in the next few months that are going to affect who can participate in the rebuilding stage of agriculture.

Generally, these policies fall into two groups: one, those that allow an operation to retain a secure farming base from which to participate in the rebuilding, and two, those that directly affect the availability of financing to build up a farming base to a family size farm operation.

I have some other material in my prepared statement that I hope could be made a part of the record. I would like to skip, if I could, to the next page of my testimony on the role——

Senator CONRAD. Without objection we will include your full statement in the record.

Mr. SEVERENS. Thank you very much. Let me back up one step and simply say that S. 1179, Mr. Chairman, primarily deals with that first policy area: the ability of current farmers to maintain a farming base from which to participate in the rebuilding. I think with a few minor reservations we support wholeheartedly S. 1179. But we think the bill could also be improved if it addressed some of the issues that we think are going to be faced in the second policy area: that of providing financing for the rebuilding stage.

THE SPECIAL ROLE OF FMHA

FmHA is the main instrument of Federal agricultural credit policies; it has decades-long experience in assisting new or struggling operations to become efficient family size operations; it is equipped with well-articulated public purposes that have been carefully deliberated by congressional committees. We have every reason to expect FmHA to be playing a positive role—especially in the farmland rebuilding stage which is the basic purpose for which the Agency was created is at stake, and at a time when farmland prices are affordable and the risks to FmHA and the taxpayer low. Unfortunately, this is not the case. But before focusing on FmHA's disappointing performance, I would like to make some general observations about the new set of emerging farmland buyers.

WHO ARE THE NEW FARMLAND BUYERS?

Farms are beginning to sell, and it is important to understand who is buying those farms and who is not able to buy those farms. In Nebraska and Minnesota land sale reports, university agricultural economists in both States note the dramatic increase in outright cash purchases of farmland. The Nebraska agricultural economist, Bruce Johnson, reports that "more than one-third and perhaps nearly one-half" of recent farmland sales in Nebraska have been for cash. He suggests one contributing reason for this by noting that farmland purchases now provide a healthy rate of return compared to other available investment opportunities.

A Des Moines Register report confirms this. Looking at farmland sales in one key Iowa county, the reporter found in the 30 land sales over the past 15 months, 70 percent of the land had been purchased by investors of one type or another. The remaining land had been purchased by farmers. While the report does not look at the financing terms, those farmers who were able to buy that 30 percent of the land were undoubtedly well-established farmers in order to be able to afford the 40 to 50 percent downpayment required by most lenders.

WHO'S NOT ABLE TO BUY FARMLAND?

That gets us to the question who is not able to buy farmland. Well, for starters, Dwayne and Jodi Kay of Hoskins, Nebraska and Steve and Kathleen Barnes of Cody, Nebraska. They are the plaintiffs in *Kay* v. *Lyng,* a class action lawsuit, filed in U.S. District Court for Nebraska on May 14, that challenges FmHA's sidestepping of Congress' explicit plan for the sale of FmHA inventory farmland. This plan was adopted in 1961 by Congress and reaffirmed as recently as the credit title of the Food Security Act of 1985. That plan regards FmHA inventory farmland as a public resource to be resold in a manner consistent with the historic purposes of FmHA—making farming opportunities available to qualified operations which have the ability to become efficient family size farm operations.

And let me make a point that is not in my testimony here. The Kay's and the Barnes' are two couples in their twenties. They have been hardened by the last 4 or 5 years' worth of experience. They are determined more than ever to enter into farming, buy their first piece of property, and they are absolutely natural candidates to be able to buy FmHA inventory. Both of them in one way or another were frustrated from buying land from the Nebraska Farmers Home inventory by the peculiar and illegal application of FmHA regulations and regulations that are contrary to statute. They are a new wave of people who would like to buy. They are bright. They are ready to go. They see this land as affordable price and for the first time. This is exactly the time that we need to be helping this type of people. It is exactly the type of people for which Farmers Home was originally created.

For the rest of my testimony I would like to jump to a chart that I hope was handed out separately. It is not attached. I provided it this morning. It's a chart on FmHA farmland inventory sales on the back side of an editorial from the Atlanta Constitution.

Mr. Chairman, if I could just take a few moments to go through this chart. This is based on recent data, March 31, 1987, second quarter into the fiscal year provided by Farmers Home as to the status of their inventory.

The chart at the top part of the page shows the 10 leading States selling farmland. At the left, the 10 States for the first quarter of the fiscal year. On the right, the 10 States for the first and second quarters combined. I will just make a few observations. Georgia is the leading State. It has sold 56 farms in the first 6 months of fiscal year 1987. That is roughly 10 farms a month, pretty good clip, and 87 percent of the sales of those farms went to ineligible farmers.

[The chart referred to can be found on page 148.]

Senator CONRAD. Ineligible for FmHA?

Mr. SEVERENS. Ineligible for FmHA service. They were either cash sales or FmHA financing was given at an above FO rate for people who could not get financing elsewhere, but they are still classed as ineligible farmers.

All of the figures, in that column, you will note, are in the high 80's and even the 90's. Ohio and Missouri, 93 percent of the sales in those States have all gone to ineligible farmers.

Senator CONRAD. If we were to reach a conclusion from your testimony, not only are we having a failure by FmHA to keep farmers who are there on the land now, we then have a follow-on failure to get that land back in the hands of people who FmHA was designed to serve in the first place.

Mr. SEVERENS. That is right.

Senator CONRAD. That would be the conclusion that one would draw from these numbers?

Mr. SEVERENS. Yes. And I would bring to your attention on the back side of this that it has been noted in Georgia that this is happening, and the Atlanta Constitution, the leading newspaper in Atlanta, has editorialized and asked some very serious questions about why this land is being sold that way in that particular State.

If I could, I would like to bring to the committee's attention another very special problem that is a little more difficult to get your finger on. If you look at the chart in the middle of the page, we have the 10 leading States with the most land in their inventory, starting with Missouri at the top with 181,000 acres, going down to Nebraska in the number 10 spot with 52,000 acres.

An interesting point about this chart, of those 10 States, notice that none of those 10 States, except for 1, appear in the charts at the top of the page. In other words, these States are not selling inventory property, and yet they have the most. That raises a very important question. Why is it that the States with the most inventory land are not selling their property? Well, there could be a couple of explanations for this. One could be that the State directors in those States are exercising their authority to continue the moratorium on land sales saying that the sale of land in those States would depress land values and, therefore, should be kept off the market. There are some problems with that explanation. I will get to those problems later.

Let me give you the second reason why they may not be selling as property, and that is that the longer they wait, the more they are going to argue that they do not have to sell this property to FmHA borrowers. That is because, by their interpretation of the law, all they have to do is hold the property for 3 years. And once it has been held for 3 years, it passes out of the pipeline. It is automatically classed what they call surplus, and the requirement, the statutory requirement to sell it to FmHA eligible farmers and qualified family size operators is lifted. They can sell it to whomever they want, no questions asked. They do not even have to come up with phony excuses for classing the property as surplus, such as they are doing in Nebraska.

So that truly, to give a cynical interpretation of this event, the truly clever State director will avoid the political problems associated with selling inventory land until a significant amount of it has passed through the 3-year pipeline. They will be less subject to criticism. They feel they will be on sounder ground if they wait the 3 years and then begin selling the property because the public purposes, in their opinion, will have been lifted.

We dispute that interpretation, but it is a very real possibility that this is what is going on. I can tell you from our experience in Nebraska where we have been involved with a law suit, we have a list of every single piece of inventory property, a legal description, and when it entered into the Farmers Home inventory, and we have classed it chronologically. It runs from property that has been in as long as 5 years and some that has only been in for a few months.

The important part is that right now as of May 31, roughly—well let me give you exact figures—19 percent of the Nebraska inventory land is already at the outer end of this pipeline. It has already been in the inventory for 3 years. That is the property they can sell first. That is the property that I suggest that in a lot of these States, Missouri, South Dakota, Kansas, North Dakota, Iowa, Mississippi, Oklahoma, and Colorado, the States that have not begun sales, that they may begin.

Along that line, let me report—as you know, Mr. Chairman, from hearings, field hearings in January—there was a good deal of concern about the proposed regulations at Farmers Home issued at that time, one of which, as you probably remember, would change the 3-year period to 1 year. Now how they can change a statutory provision by regulations to 1 year remains to be seen. But were that made a law in Nebraska, and this is our chronological chart of properties, all of these properties, or 80 percent of the farms would already be classified as surplus automatically. No longer any public policy to sell these to qualified family size farmers. Sell them for cash to the highest bidder.

The normal procedure is to keep land in the inventory for at least 1 year. The average property in Nebraska has been in the inventory for 1 year and 8 months. So that there is every reason to think that Farmers Home is consciously involved with avoiding the public policy to sell this property to family size farmers. It wants to do all that it can.

Returning to my closing statement in my prepared statement. I wanted to bring one other thing to the committee's attention.

On a somewhat related note, an April 24 USDA document which has been circulating, which calls for capitalizing of Farm Credit

System debt reserve fund by the transfer of FmHA farmland inventory to the Farm Credit System. This would be a complete renunciation of the longstanding public policies that are now vested in that FmHA inventory land. Such a Farm Credit System bailout scheme amounts to a sellout scheme of FmHA public purposes. It needs to be rejected out of hand.

In closing, let me restate what is at stake during the farmland rebuilding stage. The future directions of family farm agriculture ownership patterns and the concept of the owner-operator. FmHA is the major instrument of Federal agricultural credit policies. Congress has a well articulated public policy, and it is being thwarted in one way or another in almost every State. While litigation can help, legislative action is needed to strengthen that policy. I hope this committee is prepared to take the necessary steps. Thank you for this opportunity to provide testimony.

Senator CONRAD. Thank you, Gene.

[The prepared statement of Mr. Severens, Information Alert Nos. 87-03, 87-04, and 87-01, and the article from the Atlanta Constitution, "Strange doings at Farmers Home" follow:]

Testimony of
Eugene Severens
Center for Rural Affairs; Walthill, Nebraska
before the
U. S. Senate Committee on Agriculture, Nutrition and Forestry
Washington, D. C.
June 9, 1987

Mr. Chairman, my name is Eugene Severens; I work for the Center for Rural Affairs in Walthill, Nebraska. The Center was formed in 1973 by rural Nebraskans concerned about the role of public policy in the decline of family farms and rural communities. We would like to thank the chairman and other members of this Committee for holding hearings on the role of Farmers Home Administration (FmHA)--the agency is the main instrument of federal agricultural credit policy, and its policy and commitment are needed today more than ever. I say, "today more than ever," because we are entering the rebuilding stage of the farm crisis. The excess debt attached to farming assets has been painfully squeezed out during the liquidation stage of the past four years, and farming assets, especially farmland, is now available for the first time in years at affordable prices.

As I stated to this Committee before at field hearings in Omaha last January, we believe that any federal policy that affects access to agricultural credit must be analyzed from the standpoint of--how will this policy alter the competitive positions of farmers within agriculture? Or in today's rebuilding stage, the policy question becomes: how will this policy alter the competitive positions of farmers--or other landbuyers--to buy farmland?

We need to remind ourselves that farmers are not a homogeneous group. If federal actions (like FmHA policies, the secondary market, or Farm Credit System (FCS) bailouts) differentially affect access to agricultural credit, Congress will, by definition, be helping one group of farmers (or land buyers) at the expense of another. This, of course, is not a new revelation, but is the historic rationale for the creation of FmHA and federal intervention in agricultural credit: to provide special access to credit for a specific subset of farmers. The long-standing, bipartisan definition of that subset has always been: beginning and modest, low-equity farms that have the ability to become efficient family-size operations but are unable to get credit elsewhere. I would like to spend the rest of my time discussing how federal credit policies, especially FmHA's, affect family-size farmers' ability to participate in the coming rebuilding of agriculture. In particular, my testimony will focus on how those credit policies adversely affect family-size farmers' ability to control farmland.

Federal Policy and the Resale of Lender Inventory Farmland

Our organization believes that the coming round of farmland sales is going to be an historic event that will shape the future ownership and control of American farmland and, by implication, the future of family farm agriculture and the concept of the owner-operator. Until recently, much of the potentially available farmland has been volunatrily warehoused by agricultral lenders, including FmHA. As we know farmland sales have started picking up, and some FCS banks as well as FmHA have begun selling farmland. Several proposed changes in federal agricultural credit policies are going to have a profound impact on those sales as those policies change the competitive positions of the would-be buyers of that farmland. Some of those major policies include:

--the manner in which FmHA sells its farmland inventory;

--the availability of FmHA FO funds for farmland purchases;

--the ability of FmHA borrowers to settle debts by partial liquidation and retain a minimum farming base from which to rebuild;

--the continued availability and success of Chapter 12 bankruptcy to allow the retention of minimum farming base from which to rebuild;

--the continued development of bankruptcy alternatives,like mandatory mediation, to promote fair, realistic debt settlement procedures that prevent arbitrary and inefficient termination of family farming bases;

--the sale of FCS inventory as a part of a broader FCS bailout; and

--the creation of a secondary market for farm mortgages.

These policies fall into two groups: (1) those that allow an operation to retain a secure farming base from which to rebuild; and (2) those that directly affect the availability of financing to build up a farming base to a family-size farm operation. At stake in these policies is the future ownership and control of American farmland, and by implication, the future of family farm agriculture and the concept of the owner-operator.

FmHA is the subject of this hearing, but I would like to make a few remarks about the secondary market and the FCS bailout. First, on the secondary market. I have attached a copy of our April 24th Information Alert (No. 87-03) which I would like to ask be made a part of the record. For purposes of this hearing, let me just summarize its conclusion. Because of the strict underwriting standards, the secondary market for farm mortgages will focus credit breaks on the better off land buyers not typical family-size farm operations and certainly not beginning or rebuilding operations. The secondary market concept stands the traditional public policy on its head because well-established farmers and outside investors will get reduced interest rates and a competitive advantage over efficient family-size farmers who don't meet secondary market underwriting standards.

Second, as far as the Farm Credit System bailout schemes are concerned, we think Congress should pay special attention to how any bailout scheme will affect the ability of beginning and re-entry operations to gain financing to participate in the rebuilding stage. Congress should pay special attention to the role that FCS inventory farmland can play in any bailout scheme. This inventory property is one of FCS's few assets and it represents a rare public policy opportunity to effect both the rebuilding of family farm agriculture and important conservation practices. For more information, I have attached our May 21st Information Alert (No. 87-04) to this testimony and would ask if it could be made a part of the record.

The Special Role of FmHA

FmHA is the main instrument of federal agricultural credit policies; it has decades-long experience in assisting new or struggling operations to become efficient family-size operations; it is equipped with well articulated public purposes that have been carefully deliberated by congressional committees. We have every reason to expect FmHA to be playing a positive role--especially in the farmland rebuilding stage which is the basic purpose for which the agency was created and at a time when farmland prices are affordable and the risks of FmHA financing low. Unfortunately this is not the case. But before focussing on FmHA's disappointing performance, I'd like to make some general observations about the new set of emerging land buyers.

Who Are the New Farmland Buyers? In Nebraska and Minnesota land sale reports, university agricultural economists in both states note the dramatic increase in outright cash purchases of farmland. The Nebraska economist, Bruce Johnson, reports that "more than one-third and perhaps nearly one-half" of recent land sales have been for cash in that state. He suggests one contributing reason for this by noting that farmland purchases now provide a healthy rate of return compared to other available investment opportunities.

A Des Moines Register report confirms this. Looking at farmland sales in one key Iowa county, the reporter found in the 30 land sales over the last 15 months, 70% of the land had been purchased by investors of one type of another. The remaining land had been purchased by farmers. While the report doesn't look at financing terms, these farmers were probably well-established in order to afford the 40-50% downpayment required by most lenders.

Who's Not Able to Buy Farmland? Who's ready to buy but can't? For starters, Dwayne and Jodi Kay of Hoskins, Nebraska and Steve and Kathleen Barnes of Cody, Nebraska. They are the plaintiffs in Kay v. Lyng, a class action lawsuit, filed in U.S. District Court for Nebraska on May 14, that challenges FmHA's side stepping of Congress' explicit plan for the sale of FmHA inventory farmland--a plan adopted in 1961 and reaffirmed as recently as 1985. That plan regards FmHA inventory farmland as a public resource to be resold in a manner consistent with the historic purposes of FmHA--making farming opportunities available to qualified operations which have the ability to become efficient family-size farms. For more background information on these problems I have attached an April 10th Information Alert (No. 87-01) which I'd like to request be made a part of this record.

For the rest of my testimony I'd like to discuss the attached charts which analyze FmHA inventory data through March 31, 1987. (See attached charts).

. . . . . .

On a related note, an April 24th USDA document has been circulating which calls for capitalizing an FCS debt reserve fund by the transfer of FmHA farmland inventory to the Farm Credit System. This would be a complete renunciation of the long-standing public policies that are now vested in that FmHA inventory land. This FCS "bailout" scheme amounts to a "sell out" of FmHA. It needs to be rejected out of hand.

In closing let me restate what's at stake during the farmland rebuilding: the future of family farm agriculture and the concept of the owner-operator. FmHA is the major instrument of federal agricultural credit policies. Congress has a well articulated public policy, and it is being thwarted in almost every state. While litigation can help, legislative action is needed to strengthen that policy. I hope this Committee is prepared to take the necessary steps. Thank you for this opportunity to provide testimony.

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REBUILDING FAMILY FARM AGRICULTURE
INFORMATION ALERT NO. 87-03

April 24, 1987

Secondary Market Concept Stands Public Policy On Its Head

Summary: The resale of liquidated farmland, which has been "warehoused" by agricultural lenders, is a once-in-a-generation chance for efficient family-size farmers to buy farmland at affordable prices and begin rebuilding family farm agriculture. The criticial policy question for this rebuilding stage is: which farmers are going to be able to obtain financing to participate in this rebuiding? The federal government's long-standing, bipartisan policy in agricultural credit has always been to provide modest assistance to efficient family-size operations which cannot get credit elsewhere. The proposed secondary market for farm mortgages stands this policy on its head. Instead of a policy of assisting efficient farmers who couldn't get credit elsewhere, the proposed secondary market implements a policy of assisting land buyers who can get it anywhere else.

Because of tight underwriting standards and the vunerability of a secondary market based on a single sector as volatile as agriculture, the proposed secondary market schemes necessarily focus lending on blue-chip land buyers. Well-established farmers and outside investors will get reduced interest rates and a competitive advantage over efficient family-size farmers who don't meet secondary market underwriting standards.

Ideas for the creation of a secondary market for farm mortgages have been circulating for over a year, and are now being actively studied for the Farm Credit System bailout package being considered by the agriculture committees in the House and Senate. Proponents have naturally focussed on the advantages of the secondary market. Analysis of disadvantages has been scant and superficial.

Advantages of a Secondary Market

For mortgage originators, the advantages of a secondary market include:
- —increased ability to make long-term agricultural real estate loans (through resale of loans on the secondary market)
- —higher yields through more rapid turnover of portfolios
- —increased profits through origination fees and servicing fees (recent proposals provide a role for the FCS which then captures some of these fees)
- —better financial matching of bank assets (deposits) with loan terms

For farmer-borrowers, proponents claim the following advantages:
- —increased availability of long-term, fixed-rate mortgages
- —lower interest rates because of greater fund availability
- —increase competition and better service because of increase in number of sources for long-term agricultural credit.

Disadvantages of Secondary Market

There has been little analysis or questioning of the possible disadvantages of the secondary market approach in agriculture. We'd like to raise four basic concerns. First, which buyers would get the benefit of the secondary market? It seems very clear that very strict underwriting standards will be needed to make a secondary mortgage market work in agriculture. One detailed report prepared by the American Council of Life Insurance (ACLI) uses underwriting standards that limit secondary market lending to the top 6-25% of farm real estate buyers, and there is nothing that prevents absentee owners and investors from gaining the benefits of the secondary market to farmers. In other words, the principle beneficiaries of the secondary market are likely to be blue chip borrowers made up primarily of outside investors and already well established farm operations.

Second, and more fundamental, what legitimate public purpose is served by using the powers of the federal government to give a competitive credit advantage to financially well-established land buyers. The secondary market proposals that we have seen have never addressed how the creation of a secondary market will changed the competitive positions of borrowers within agriculture. Even if there is some interest rate reduction that spills over into the traditional (non-secondary market), this rate reduction will be significantly less than that received by the direct secondary market borrowers. Using ACLI figures, we estimate that on a $100,000 land loan, the top land buyers will get an annual $750 interest rate reduction. Other borrowers who are eligible for commercial credit but not good enough for the secondary market underwriting standards may get a spillover interest rate reduction of only $87.14. All these buyers are competitors and the creation of the secondary market will artifically shift the competitive positions of farmers by giving the best-heeled buyers a larger interest rate advantage.

The secondary market will stand public policy on its head. Instead of serving borrowers who cannot get credit elsewhere, the federal government, through secondary market intervention, will be giving an interest break to top-ranked customers. Instead of the lender of last resort, the federal government will be "the guarantor of blue-chip land buyers".

Third, all the proposals we have seen are based primarily on the secondary market for housing. We think there are important differences between the housing industry and agriculture. First and foremost, the income sources of home buyers and their ability to repay their home loan is as diversified as the entire U. S. economy. By contrast, the ability of farmers to repay their farm loans is not diversified but based on the up's and down's of the farm economy. This is recreating one of the fundamental problems of the FCS--its fortunes are linked, and vulnerable, to the well-being of one sector. The government's risk, it seems, are far greater with a secondary market for agriculture than for housing. This vulnerability can be tempered in two ways: adopting strict underwriting standards and thus limiting the benefits to blue-chip borrowers or focussing loans towards land buyers whose incomes are not vulnerable to agriculture--outside investors. The kinds of measures needed to protect the secondary market from the risks of lending to a single, volatile sector like agriculture obviate any legitimate public purpose which could be served by the new device.

Fourth, creation of a secondary market is likely to create pressure for the standardization of state farm foreclosure laws. The current farm crisis has prompted a number of state legislatures to engage in a long-overdue review of antiquated farm foreclosure laws. The result has been more flexible and comprehensive foreclosure proceedings (including mediation) that reduce arbitrary liquidations or unnecessary dislocation of farm families. A secondary market in agriculture will need more unified security agreements and the practical political effect may very well be to reduce state foreclosure procedures to fast-track liquidation laws.

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REBUILDING FAMILY FARMS
INFORMATION ALERT 87-04

May 21, 1987

A PLAN TO RESCUE FCS AND REBUILD FAMILY FARMS

Summary

A number of FCS bailout proposals use the FCS inventory as an integral component of the bailout scheme. One of these approaches calls for the government purchase of FCS farmland inventory as a way to acheive a number of public policies:

(1) provide a cash infusion to distressed lenders (can include banks as well as FCS institutions),
(2) stabilize agricultural land values through federally sponsored, temporary warehousing and by providing land purchase credit for a new set of buyers who would otherwise not be in the market,
(3) provide land purchasing opportunities to family-size operations which have the ability to become efficient family farms,
(4) rejuvenate local, rural economies which are based on family farms,
(5) provide a unique opportunity to develop appropriate conservation practices on acquired farmland.

The farmland that has accumulated in lenders' inventories is a rare public policy opportunity. The inventories can not only play a crucial role in any bailout scheme, but they can also serve as vehicle to implement a number of other critical policy objectives besides stabilizing distressed lenders.

Policy Need

While the farmland properties acquired by agricultural lenders are a valuable asset, in most cases, management of this farmland is a burden for which lenders are ill-equipped. In addition, bank examiners and auditors do not value inventory property highly, and the existence of inventoried farmland does little to improve a distressed lender's financial assessment. In most cases, this farmland can be used to stabilize a lender only by selling it and converting it from a "dead" asset to a usable asset--cash.

Until fairly recently, agricultural lenders had been voluntarily warehousing this inventory farmland because increased sales of farmland would have a depressing effect on the value of farmland which was serving as collateral for current loans. They are now under pressure to begin selling this land.

At the same time, it is clear from the recent sale of some FmHA inventory parcels, that many farm families are ready to begin building up their operations. Land prices have reached the point where the land can be paid for by farming it. With land falling to realistic prices, the critical policy question becomes--who will have access to the financing needed to buy this newly affordable farmland? Lenders who have recently begun to sell acquired properties are requiring high downpayments and giving discounts for cash. Beginning or rebuilding family farms operations will simply not be able to compete for this inventory land.

"The Family Farm and Agricultural Lender Rebuilding Act"

There are two models for effecting a government facilitated purchase of distressed lenders' acquired property: (1) outright government purchase with targeted resale or (2) a government facilitated financing of individuals to purchase inventory farmland direct from distressed lenders. The second model could use a device similar to FmHA's direct farm ownership loan (FO) program to provide capital to give more farmers the ability to purchase inventory property. Under this model, the cash infusion to a distressed lender would be slower and less predictable, and there would be no mechanism for warehousing the farmland.

The Center for Rural Affairs has proposed an approach (which we call "the Family Farm and Agricultural Lender Rebuilding Act") based on three steps: (1) government purchase of distressed lender farmland; (2) temporary warehousing to prevent adverse impact on land sales, and (3) a two-step, targetted resale mechanism which is modelled after Congress' scheme for the resale of FmHA's inventory farmland.

This proposal recommends that FmHA be the implementing agency. While we share many reservations about FmHA's commitment to important congressionaly policies, it is probably, in the last analysis, the most logical and efficient choice. FmHA has long-standing experience in providing farm ownership financing to efficient family-size farms which cannot get credit elsewhere, and it has a county-level delivery system. Combining the FCS inventory with FmHA's will create some efficiencies since, FmHA is, itself, the second largest holder (after the FCS) of farmland inventory and will be implementing all of the warehousing and targeted resale steps for its own inventory. Finally, FmHA is a logical choice because there is a healthy tradition of monitoring FmHA's policy implementation by both Congress and many local organizations. If this inventory warehousing plan has merit, the only other realistic choice for implementation would be the creation of a new entity with untested authority, in which case, the monitoring capacity, which is so important to protecting the integrity of public policies, would be limited. The cost of the program would be roughly the value of current farmland inventories of qualified agricultural lenders.

The Resale Plan

If FCS and other distressed lenders' inventory property were combined with FmHA's inventory, the current FmHA resale scheme would be used to resale the FCS property. This includes a three-year phase for selling farmland to qualified family-sized farms with FmHA financing. After this three-year period, farmland can be sold to otherwise ineligible buyers. Highly erodible land is subject to conservation restrictions, and farmland cannot be sold at any time if it would have an adverse effect on land values. Once in the inventory, this farmland is owned by the federal government and since no private seller is involved, FmHA financing during the three-year period does not involve a loan of funds from the government, but rather a payment to the government. The government is in the position of a contract seller and no appropriation is necessary for financing this resale.

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REBUILDING FAMILY FARM AGRICULTURE
INFORMATION ALERT NO. 87-01

April 10, 1987

FmHA Farmland Sales By-pass 1985 Law

Summary

Congress has a long-standing plan for the sale of FmHA inventory property and refined this plan in the credit title of the 1985 farm bill. That plan regards FmHA inventory farmland as a public resource for rebuilding family farm agriculture. It is to be sold into private hands in a manner consistent with the historic purpose of FmHA's Farm Ownership program--to provide farming opportunities for efficient family-size operators who cannot get credit elsewhere. The farmland is to be held for three years with installment credit sales made to FmHA-eligible borrowers. If unsold after three years, the land is to be reclassified as "surplus property" and sold to the highest bidder regardless of FmHA eligibility.

Recent FmHA data and interviews with selected state and local FmHA officials show that FmHA is bypassing this congressional scheme by suddenly reclassifying massive amounts of inventory farmland as "surplus property" and selling it to ineligible or cash-paying buyers who are outside the scope of FmHA's programs. States vary widely in their treatment of inventory farmland, and FmHA's national office has not justified the reclassification. Many states (especially in the Midwest) have just begun to sell inventory farmland, but in most states the pattern of massive and unsupported reclassification of farmland as "surplus" is showing up.

71% of FmHA Farms Sold to Ineligible Buyers

By FmHA's most recent data (December 1986), 71% of current farmland inventory sales (100% in some important farm states) is being sold to buyers who are ineligible for FmHA loans and therefore outside the scope of the agency's mission. If this were to continue, and given projections for a doubling of FmHA's inventory, the sale of around 7000 farms (over 2 billion acres) would bypass the congressional scheme which envisions this inventory as an important public resource for rebuilding an efficient family farm agriculture. As can be seen from the chart on the next page, among the states with sold at least ten farms during the first quarter of FY1987 (October-December 1987), Tennessee had the worst record by selling 92% of its farms to ineligible buyers. Tennessee was followed by Missouri--86%, Florida--82%, Indiana--81%, and Kentucky--77%. FmHA inventory sales were under a moratorium in many key states (especially in the Midwest) because they would further depress land market values; as a result these states do not show up on the chart. This moratorium has now been lifted in almost all states, and we expect data for the second quarter of FY 1987 to show significant increases in those states.

At the core of this by-passing scheme is an administrative determination of whether inventory farmland is "suitable" for FmHA program purposes or "surplus" (i.e., "unsuitable" for FmHA program purposes). Suitable farmland must be reserved for sale to FmHA-eligible borrowers for three years. The disproportionate amount of farms classified as "surplus" and the even more disproportionate amounts of "surplus" farmland going up for sale is very suspect, and the local or state justification of the classification decisions (when available) is frequently illogical and, in our opinion, illegal.

% OF INVENTORY SOLD TO INELIGIBLE BORROWERS, (Oct.- Dec. 1987)

STATES (which sold 5 or more farms)	# FARMS SOLD	% SOLD TO / INELIGIBLE / BORROWERS /	STATE	# FARMS SOLD	% SOLD TO INELIGIBLE BORROWERS
1. Indiana	27	81%	9. Mississippi	8	100
2. Arkansas	19	53	10. Maine	7	86
3. Geogia	16	75	11. Oregon	6	100
4. Missouri	14	86	12. Michigan	6	50
5. Kentucky	13	77	13. No. Carolina	5	100
6. Tennessee	12	92	14. Ohio	5	100
7. Pennsylvania	12	58			
8. Florida	11	72	NATIONAL	209	71%

It is not clear who the buyers of these "surplus" farms are, but even where the buyers are "family farmers," they are, by definition, a completely different class of buyers than those intended by the 1985 farm bill amendment to the law governing FmHA sales of inventory farmland [Consolidated Farm and Rural Development Act (CONACT), Section 335; 7 USC 1985]. Section 335 requires, wherever possible, that inventory property be sold for program purposes to FmHA-eligible, family-size operations. FmHA-eligible borrowers are, by definition, unable to get credit elsewhere and, therefore, are an entirely new class of borrowers who would not be buying land but for the availability of suitable FmHA farmland and FmHA financing terms (the regular FO rate is currently 8.25%, the limited resource rate is 5%). This statutory scheme segments the land market and successfully isolates the impact of sales of suitable property from the general land market and assures little adverse impact on the values of farmland for sale on the general market.

Until recently, there has been a moratorium on the sale of FmHA farmland because it would adversely affect farmland values. This moratorium was in effect in most midwestern states, but has now been lifted. Based on interviews and the results of Freedom of Information Act requests, we predict that future FmHA inventory data will show the same pattern of massive and sudden reclassification of inventory land as "surplus" as has happened in other parts of the country. For example, in Nebraska, out of 15 farmland sales in FY 1987 (through mid-March), all but one (94%) have gone to ineligible borrowers. In Arkansas, a state FmHA directive urges local officials to reclassify farmland as surplus and "once a farm is declared surplus you should immediately prepare for sale. . ." In Indiana, data shows that even land classified as suitable to be held for sale to FmHA-eligible borrowers, it is being sold to ineligible, cash-paying buyers anyway.

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NOTE: This information alert is adopted from the Center's "Analysis of Sale of FmHA Inventory Farmland: Most FmHA Land Sales Bypass 1985 Law" (February 1987). Write the Center for a copy if you would like more information.

The Atlanta Journal
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Today's editorial page was prepared by the editorial board of The Atlanta Constitution.

PAGE 14-A, MONDAY, MAY 25, 1987

Strange doings at Farmers Home

Out in Nebraska, two farm families have filed a lawsuit against the Farmers Home Administration, claiming the agency is ignoring the law and offering much of its foreclosed land to outside investors rather than family farmers. But if the courts think agency practices in Nebraska are strange, wait until they see the figures for Georgia.

As of March, 45 percent of the agency's Nebraska inventory was classed as suitable for resale to eligible farmers (rather than outside investors). In Georgia, however, a meager 19 percent of the 36,071 acres in the Farmers Home inventory is earmarked for resale to eligible farmers. The remaining 81 percent will go to the highest bidders, such as timber companies.

Yes, something is fishy here. In 1985, Congress passed legislation which instructed Farmers Home to give farmers with limited resources the first crack at buying land the agency had acquired through foreclosure or liquidation. True, this puts the agency to some trouble and likely means lower prices. But never mind: The agency's mandate is not commercial; it is to help farmers who cannot get help elsewhere.

The question in Georgia is this: How can 81 percent of the agency's land — land once used as collateral by family farmers — be classified as unsuitable for resale to family farmers? The official answer: Much of this land was collateral for *emergency* loans in drought years, and the standards for these are looser than for other farm loans. Thus, the foreclosed land was not necessarily farmed and may not be suitable for resale to farmers.

It's a dubious reply. Congress clearly meant for land acquired from emergency loans to stay in the hands of family farmers if possible. Georgia's ratios suggest that Farmers Home is trying to evade that wish.

Why would it? Consider: Before land can be resold to eligible family farmers, the farmer who lost it first has an opportunity to lease it for three years. If he fails to buy it back in that time, it will be bid upon by other farmers of limited means. But — if the land is classified as unsuitable for the program, Farmers Home may dispose of it more quickly, and it may take the best bid from well-heeled outside investors.

In other words, it's more profitable and easier to bypass ordinary farmers and sell to the big-money crowd. Is this what the agency is doing? It seems so. Congress (as well as the courts) must get to the bottom of this and put a stop to any funny stuff.

FmHA Farmland Inventory Sales--FY 1987

Top 10 States in Sales, FY87 through 12-31-86

		No. parcels sold	% to inelig.
1.	Ind.	27	81%
2.	Ark.	19	53
3.	Ga.	16	75
4.	Mo.	14	86
5.	Ky.	13	77
6.	Tenn.	12	92
7.	Penn.	12	58
8.	Fla.	11	72
9.	Miss.	8	100
10.	Me.	7	86

Top 10 States in Sales, FY87 through 3-31-87

		No. parcels sold	% to inelig.
1.	Ga.	56	87%
2.	Ind.	48	83
3.	Ky.	47	60
4.	Tenn.	40	82
5.	Mich.	31	84
6.	Ohio	29	93
7.	Ark.	29	75
8.	Mo.	28	93
9.	Penn.	18	61
10.	Miss.	17	88

Top 10 States in Inventory Acreage FY87, through 3-31-87

1.	Mo.	181,092
2.	So. Dak.	137,356
3.	N. Mex.	100,116
4.	Kan.	90,225
5.	No. Dak.	89,682
6.	Ia.	71,149
7.	Miss.	69,200
8.	Okla.	68,422
9.	Colo.	62,507
10.	Nebr.	52,264

Senator Conrad. Next we will hear from Sarah Vogel, the assistant attorney general of the State of North Dakota, and one of the people who brought us here today.

STATEMENT OF SARAH M. VOGEL, ASSISTANT ATTORNEY GENERAL, STATE OF NORTH DAKOTA

Ms. Vogel. Thank you. It is good to be here. I am here on behalf of Attorney General Nicholas Spaeth of North Dakota, Attorney General Hubert H. Humphrey III of Minnesota, Tom Miller of Iowa, and Neil Hartigan of Illinois. We basically favor the entire bill. The two sections that we view as the most important are debt settlement and the administrative law judge provision. I will also touch on some of the other parts of the bill.

We view the debt settlement section as the most important. It is simply the key to financial survival for many farmers, and businesses in towns that provide services to farmers. It is also a key element in the continuing ability of counties to provide roads and essential public services. FmHA's debt settlement has an integral effect on the future health of rural America.

We do not view this provision as a giveaway at all. This morning Mr. Clark testified, that if this bill were adopted it would result in a loss of $7.6 billion to USDA. USDA's own statistics belie Mr. Clark's claim. Mr. Clark is claiming that the entire amount of every loan that is threatened would be lost by enactment of this bill. In fact, the March issue of USDA's "Agriculture Outlook," estimates that FmHA has already lost $2.67 billion.

Senator Conrad. I do not know if you heard the rest of his testimony which indicated 75 percent of the $7.6 billion of troubled loans is 3 years or more in arrears. So those of us who have been creditors know that if you have loans which are 3 years or more in arrears, your chance of collecting are at ground zero. So the reality is that they have already lost virtually all of the $7.6 billion. It is a question whether there is going to be a recognition of that loss.

Ms. Vogel. I do not know whether it is virtually all. I think that the collateral value remains and your bill would only require a writedown to the collateral value. According to USDA in the March 1987 "Agriculture Outlook," the estimated total debt at risk is $7.6 billion, but also estimated that the amount that will be lost is $2.67 billion.

Given the fact that money is lost—and I think it is—Farmers Home is engaging in a very expensive foreclose-and-liquidate policy that is very harmful to taxpayers, businesses, counties, schools, and other elements of rural society. I have attached as an exhibit to our prepared statement a worksheet, attachment A, that was used in North Dakota which discusses the expenses of acquisition and resale. It is called "Worksheet for Accepting Inventory Property," and it gives a number of the expenses that FmHA anticipates will be incurred when it acquires real property. The example uses a $222,000 hypothetical property. The form estimates it will cost FmHA $98,000 to hold that farm for 2 years after consideration of devaluation, real estate broker fees, commissions, and other necessary expenses.

Now it strikes me as an economic matter that if you have a farm with a debt of $150,000, that is worth only $100,000, the farmer that is on that land would be happy to pay $115,000. Sentimental value has monetary value. An investor, on the other hand, is going to want that property for $80,000. He is going to want to obtain a bargain.

Farmers Home Administration is claiming moreover that it cannot find a market for the acres of farmland that they already have. FmHA is overlooking the farmer that is on the land. I have not met one farmer ever that really wants to leave his farm. The "voluntary" liquidation is not really voluntary.

We also believe that preventing FmHA from putting additional land on the market, as Gene Severens was talking about, would help shore up agriculture bankers, and help shore up the Farm Credit Services. USDA has estimated that $4 billion of the losses that will be suffered by agricultural lenders is due to land devaluations. To quote the same article in USDA's March "Agriculture Outlook," "Had land prices not declined in the 1980's, lenders' losses on agricultural loans in the Midwest would be approximately 60 percent lower. This statistic points out the importance of land price stabilization to farmers and lenders."

If Farmers Home proceeds with its foreclose-and-liquidate policy, millions more acres of farmland will hit the market. FmHA cannot farm this land and therefore it will sell it.

These sales will have the effect of increasing losses at Farm Credit Services and agricultural bankers. We cannot afford that.

We also believe that the farmers who are with Farmers Home are worth saving. Mr. Clark's testimony implied that FmHA's view is, "we will forgive debt, but only if that existing guy is gone and we never ever have to deal with him again." This policy in effect puts all the blame on the farmer. We disagree.

By law, FmHA borrowers are necessarily higher indebted because they started farming more recently or are recovering from disasters. I have charts in our prepared statement which indicate that the year the farmer started farming is a major indicator as to whether he is in distress or not. Of farmers who started before 1960, only 9 percent are in trouble but 35 percent of farmers who started in the 1980's are in trouble.

Considering FmHA borrowers' debt to asset ratios and the fact that they are generally struggling farmers, the 35 percent delinquency rate is an indicator of good performance. And when one considers that 25 percent of the Nation's commercial farmers with little or no debt cannot cash-flow, then the FmHA delinquency rate is even more commendable.

There is no reason to be punitive against FmHA borrowers: they are generally diligent and good farmers.

While I was sitting here this morning, I was thinking back to March 1983, when I filed a predecessor lawsuit to Jim Massey's, lawsuit. The Assistant U.S. Attorney said the lawsuit should be dismissed because the farmer's position was hopeless. He said the farmers could not survive and they are all going to go down. Dwight Coleman was the lead plaintiff, and he sued John Block and Charles Shuman. Now in 1987, Dwight Coleman is still on his farm. Where are Block and Shuman? There is hope for these farmers. They should be saved.

I would also like to address two other points. First, the tribal preference on acquired farmland is a very important issue. Chairman Lonefight from the Fort Berthold Reservation is here today. The catastrophe that is happening in rural America is even worse on the Indian reservations. For a variety of reasons, Farmers Home is the only lender on the reservations. In the Fort Berthold Reservation, for example, if Farmers Home proceeds with the foreclosures that it intends, it will be taking 10 percent of the reservation's remaining trust land. And the reservation has about 50 to 60 Indian ranchers, almost all of whom are with Farmers Home, almost all of whom are facing foreclosure.

The reservation already has an unemployment rate of 60 percent. If ranching and farming—its primary remaining business—is shut down by Farmers Home, it will drastically injure the reservation. Debt settlement and tribal buy-back provisions would be a great help to native American ranchers and farmers throughout the country.

Finally, as lawyers, we strongly endorse the concept of administrative law judges. I think most people who go to an FmHA hearing walk out and say there is something seriously wrong with this system. I have done it. All of us here have done it. Perfectly rational lawyers have come into my office absolutely enraged and stating I cannot believe how terrible that system is.

The solution is to have administrative law judges. I think it would make a major positive difference to FmHA administration. People need to have a perception that they have been treated fairly. Farmers Home hearings are run generally by district directors and assistant district directors. There are only six districts in North Dakota. There were 2,000 notices sent out in North Dakota in the last year and a half. The human temptation for people in the six districts to think I will handle yours the way you want if you handle mine the way I want must be well nigh compelling.

Jim Massey talked earlier about people who are trying to exploit the farm crisis for basically unworthy political, religious, and monetary reasons. These people are given opportunities for recruitment by the FmHA appeal system.

And I also want to stress that USDA now offers administrative law judges in a variety of settings. We have listed some of the areas that they do this in the testimony. For example, if you own a carload of chicken carcasses that is condemned, you can appeal the condemnation to an administrative law judge. But the family farmer who is trying to save his home, his life's investment, and his healthy herd of cattle and chickens cannot have access to an administrative law judge. That is just not fair. It does not make common sense.

The additional cost of administrative law judges would be worth it. Moreover, it would free the FmHA people up to run the program which is what they were trained to do and what they need to do.

[The prepared statement of Attorneys General Nicholas Spaeth of North Dakota, Hubert H. Humphrey III of Minnesota, Tom M. Miller of Iowa, and Neil F. Hartigan of Illinois; submitted by Sarah M. Vogel, follows:]

SENATE AGRICULTURE COMMITTEE

HEARING ON S. 1179

June 9, 1987

TESTIMONY OF ATTORNEYS GENERAL

NICHOLAS SPAETH OF NORTH DAKOTA
HUBERT H. HUMPHREY III OF MINNESOTA
TOM M. MILLER OF IOWA
NEIL F. HARTIGAN OF ILLINOIS

DELIVERED BY:

Sarah M. Vogel
Assistant Attorney General
State of North Dakota

TESTIMONY BEFORE THE SENATE AGRICULTURE COMMITTEE

June 9, 1987

Thank you for inviting me to present testimony on S. 1179, "The FmHA Reform and Modernization Act of 1987," introduced by Senators Conrad, Daschle, Harkin, and Grassley. I am here on behalf of Attorney General Nicholas Spaeth of North Dakota, Hubert H. Humphrey III of Minnesota, Tom Miller of Iowa, and Neil F. Hartigan, Attorney General of Illinois.

These Attorneys General are at a National Association of Attorneys General now meeting in Coueur D'Alene, Idaho or had other prior commitments. They send their regrets that they are unable to be here today.

This testimony will track the sections of the bill.

SECTION 1: Debt Settlement

We view this section as the most important in the bill. Section 1 has two components: first debt settlement (or debt restructuring) for FmHA's direct (insured) loans and second speedier payout of guaranteed loans.

Speedy enactment of this section is crucial to the survival of tens of thousands of FmHA farm families and the economic health of rural states.

This debt restructuring is not a "giveaway" to farmers, it is simply a recognition that the severe downturn in the farm economy has struck FmHA borrowers the hardest. It is a recognition that the money at issue has already been lost and cannot possibly be recouped. FmHA has two choices: either to restructure its debts or to foreclose and liquidate at enormous human and economic cost.

As you are probably aware, FMHA has until now taken the second choice. Since January 1986, it has sent over 78,000 notices to farmers saying that it intends to foreclose, liquidate, and terminate releases of farm income.

Judge Bruce M. Van Sickle on May 7, 1987, ruled that the the process used by FmHA in connection with these notices was unconstitutional. Coleman v. Lyng, Order of May 7, 1987, at 36-7. He ruled on June 2, 1987, that FmHA must start over with respect to about 65,000 of these farmers. Coleman v. Lyng, Memorandum and Order of June 2, 1987, at 8-9. However, approximately 13,000 farmers' loans already had reached the point of acceleration as of May 7, 1987 (which means that all internal administrative processing by FmHA had been completed). Judge Van Sickle's Order permits FmHA to proceed with foreclosures on these 13,000 loans after a brief stay of at least 30 days.

Judge Van Sickle's ruling therefore does not abate the need for immediate congressional action. Thirteen thousand farm families are largely unaffected by his Order. The remaining 65,000 will soon find themselves back in the foreclosure pipeline, although the new pipeline will be fairer and more informative to farmers.

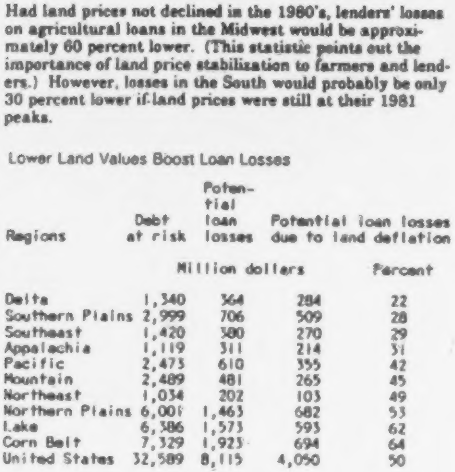
Why should Congress require debt settlement by FmHA? We see five major reasons:

First, we believe it is obvious that the money has already been lost. It is irrational to believe that FmHA can significantly recoup deficiency judgments after sale of the secured assets. Farmers who are with FmHA do not have CD's, money market certificates, stock portfolios or other assets from which FmHA could collect judgments. If they are lucky, these farmers will be able to find employment at low wages later. Most likely, the farmer will file a Chapter 7.

Second, it is often cheaper and more fiscally sound to restructure debt than to foreclose. If FmHA forces a farmer out of business, it can recover only the liquidation value of the property. After it obtains the land, it incurs significant additional costs. These include: taxes, payment of prior liens, abstract costs, taxes during the holding period, depreciation on buildings, management costs during the holding period (FmHA estimates this to be five percent of annual rental value), essential repairs, decrease in land value, resale expenses such as commissions to real estate brokers (FmHA estimates this to be five percent of market value), weed control and the "opportunity cost" of money invested in the property. In a worksheet used in North Dakota last year, FMHA estimated that the costs of holding a farm worth $222,000 for two years would be $98,864, exclusive of weed control, payment of prior liens and payment of past due taxes (Exhibit A). Omitted in this cost assessment were the costs of FmHA personnel and the value of the time spent by FmHA's lawyers and federal judges and court personnel.

Private lenders and the Farm Credit Services have realized it is often more economical to compromise debt with the existing borrower and to keep that borrower on the land than to engage in a largely futile exercise in collection. It is time that FmHA realized the same harsh reality.

Third, permitting FmHA to continue with its present foreclose-and-liquidate policy will further destabilize farmland values. $4,050,000,000 of anticipated farm lender losses are due to land deflation and lender losses in the Midwest would have been 60% lower but for land devaluation. According to U.S.D.A.:



Had land prices not declined in the 1980's, lenders' losses on agricultural loans in the Midwest would be approximately 60 percent lower. (This statistic points out the importance of land price stabilization to farmers and lenders.) However, losses in the South would probably be only 30 percent lower if land prices were still at their 1981 peaks.

Lower Land Values Boost Loan Losses

Regions	Debt at risk	Potential loan losses	Potential loan losses due to land deflation	
	Million dollars			Percent
Delta	1,340	364	284	22
Southern Plains	2,999	706	509	28
Southeast	1,420	380	270	29
Appalachia	1,119	311	214	31
Pacific	2,473	610	355	42
Mountain	2,489	481	265	45
Northeast	1,034	202	103	49
Northern Plains	6,001	1,463	682	53
Lake	6,386	1,573	593	62
Corn Belt	7,329	1,923	694	64
United States	32,589	8,115	4,050	50

"Agriculture Outlook" USDA, March, 1987, 32.

FmHA owned, as of December 31, 1986, 1,486,204 acres of farmland. Only 22 farms -- an infinitesimal number -- have been leased or sold back to the original owners. If FmHA proceeds with the 13,000 and any new foreclosures from among the 65,000 farms in the wings, it will acquire yet more millions of acres of farmland. Since FmHA cannot farm this land it will be sold. Throwing this land on the market will cause devastating injury to the loan portfolios of farm credit services lenders and commercial bankers. The market for farmland is extremely limited. Every farm sold by FmHA is in direct competition with FCS, bankers, and farmers who wish to sell land either for retirement or their own debt restructuring. More land on the market inevitably will mean lower prices.

The Midwest has already seen more agricultural bank failures than at any time since the Great Depression. The troubles of the FCS lenders are already too well known to this Committee. Many of these problems were caused by precipitous declines in the values. One way to stabilize land values and stabilize the fiscal soundness of FCS lenders and commercial agriculture bankers is to require FmHA to restructure its debt and to keep that land from hitting the market.

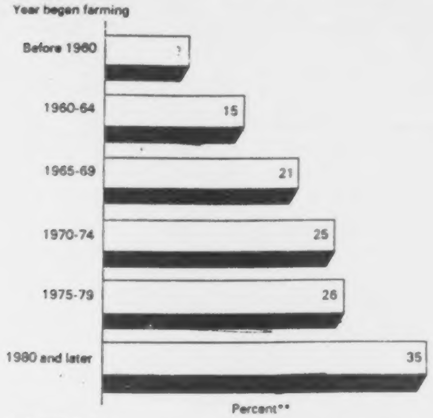
As representatives of states, we also want to say that farmland taxation is crucial to provision of revenue used for essential services such as county government, farm to market roads, schools, and essential social services. These revenues directly depend on land values. Further, erosion of land values caused by FmHA land sales will lead to further erosion of property tax valuations, and concomitant declines in the quality of life in rural areas.

Fourth, we simply do not believe that the FmHA borrowers who were delinquent and who are financially stressed should be written off as bad farmers. Let us look at *why* these farmers are delinquent and financial stressed. First, FmHA borrowers are, by law, farmers who could not get credit to begin with elsewhere. If FMHA borrowers significantly improve financial conditions, they must, by law, "graduate" to a private lender. FmHA borrowers necessarily have higher debt to asset ratio than borrowers from commercial lenders and the FCS.

While farmer borrowers nationwide had an average debt to asset ratio of 24.9 in 1985, "Agriculture Outlook" Sept. 1986, p. 21. FmHA borrowers in 1986 had, on the average, a *76% debt to asset* ratio as of 1986. 52 Fed. Reg. 1706 (Jan. 15, 1987). It is notable that even *before* the massive farmland devaluations of 1985, 1986, and 1987, FmHA said that of its 1983-1984 borrowers 20% were technically insolvent (100% debt to asset or over); 32% were between 70-99% indebted; 32% were between 40-69% indebted and only 17% had a "safe" ratio of under 40%. 52 Fed. Reg. 1706 (Jan. 15, 1987). Given these ratios, it is praiseworthy that only 35% of FmHA borrowers are behind on their scheduled payments. FmHA, *Farm and Housing Activity Report*, March 31, 1987, at 11. The loan performance of these struggling FmHA borrowers under adverse conditions is ever more incredible when one compares them to other farmers. USDA says that "*170,000 operators* [or 25% of the 670,000 commercial farm operators in the United States *with no or low debt were unable to meet all financial obligations after covering family living expenses.*" USDA, "Agricultural Debt at Risk: How Much Do Lenders Stand to Lose?" *Agriculture Outlook*, March 1987, at 27 (emphasis supplied.)

The key to farm survival in fact appears to be based less on sound farming methodology and more on the accident of time of birth. Of those farmers who started farming before 1960, only 9% are in distress. But 21% of farmers who started in 1965-1969, 25% who started in 1970-1974, 26% who started in 1975-1979 and 35% who started in the 1980's are in distress.

More Farmers* Who Started Recently Are Experiencing Financial Stress



*Sole proprietors.
**Of farmers who began in each period who are financially stressed.

Too often we have seen officials of FmHA blame the farmer for delinquency or diminishment of net worth when in fact the national and global farm economy is to blame for most farm distress today.

Because FmHA's legislative mission is to help beginning farmers in adversity and to graduate its successful farmers as soon as possible, it necessarily has more stressed farmers than other lenders. But this does not mean these stressed farmers are necessarily bad farmers.

Fifth, restructuring FmHA debt is sound public policy. The nation has a stake in ensuring a stable supply of food and fiber and in fostering the next generation of farmers. The national government has an obligation to the states to adopt sound and humane stances on farm policy. If FmHA were to proceed to foreclose or liquidate on its 93,276 delinquent FmHA borrowers, it would shut down 14% of all commercial-sized farmers in the United States. Of course, FmHA would say but we are only proposing to shut down 13,000 farmers now and an unknown number of the 65,000 whose foreclosure processing was temporarily halted by Judge Van Sickle. "Only" 13,000 is still 2% of our nation's commercial-sized farmers! Whether the number is 2% of 14% or a percentage in between, the consequences of FmHA's stated course of action would be catastrophic socially, politically, and economically. FmHA would cause untold thousands of small town businesses to fail, schools to close, roads to fall into disrepair, banks to fail, welfare burdens to increase, suicides, child and spousal abuse and neglect.

If USDA persists in refusing to debt settle prior to liquidation it will not only lose the estimated 2.67 billion directly at risk, it will also increase taxpayer losses by millions and increase losses to small businesses, banks, rural governments, farm lenders and farmers by millions. We pay now or later. It's cheaper and better to pay now.

FmHA recently has made claims that it cannot find eligible family farmers to buy its millions of acres of acquired farmland. It is overlooking the farm family now on the land. This family would work harder, pay more and take better care of the land than anyone else. The taxpayer would save money, rural business would benefit, and social welfare burdens would not multiply on already overburdened state and federal agencies. The only ones that would lose by debt settlement are bankruptcy lawyers and trustees.

It makes common sense to adopt section 1 of S. 1187 and you should do so.

SECTION 2. Loan Servicing Eligibility.

Congress has long sought deferrals for FmHA borrowers. Nine years ago, Congress enacted a law stating that the Secretary could defer loan payments when the borrower was temporarily unable to make schedule loan payments due to circumstances beyond his control without unduly impairing his standard of living. FmHA did nothing. 7 U.S.C. § 1981(a), Emergency Agricultural Adjustment Act of 1978, Publ L. No. 95-334. As the farm economy worsened in 1981 and 1982, Congress passed resolutions requesting that FmHA implement the deferral law and condemning its failure to do so. In 1982 and 1983 lawsuits were filed throughout the country against FmHA to compel it to implement the program. A series of cases, Curry v. BlocK, 541 F. Supp. 506 (S.D. Ga. 1982), aff'd 738 F.2d 1556 (11th Cir. 1984); Allison v. Block, 556 F. Supp. 400 (W.D. Mo. 1982), aff'd 723 F.2d 631 (8th Cir. 1983); Coleman v. Block, 562 F. Supp. 1353 (D.N.D. 1983) and others were filed. The Coleman case became a national class action in late 1983. Coleman v. Block, 580 F. Supp. 192 (D.N.D. 1983) and Coleman v. Block, 580 F. Supp. 194 (D.N.D. 1983). Judge Van Sickle enjoined FmHA from foreclosing, accelerating, demanding "voluntary" conveyance, or starving out farmers by cutting off releases for essential family living and farm operating purposes unless it first notified farmers of the deferral program and provided a prior, fair hearing.

Even after these profound setbacks in court, FmHA still resisted implementing deferral. FmHA waited until November of 1985 to issue deferral regulations and a revised foreclosure process. These regulations were obviously inadequate and were designed to prevent, not foster, use of deferrals. A supplemental class action lawsuit was filed by Jim Massey and Lynn Hayes of the Farmers Legal Action Group within weeks. In March, 1986, parts of the regulations primarily concerning appeals and income releases were held to be illegal but FmHA was permitted to mail the form letters and to commence the process. Coleman v. Block, 632 F. Supp. 1005 (D.N.D. 1986). After a hearing in March, 1987, Judge Van Sickle ruled on May 7, 1987, that the form that the farmers had to fill out to select FmHA servicing options was "fundamentally unfair" and an "arbitrary deprivation of property without due process of law." He ordered FmHA to prepare clear and understandable explanations of servicing options including deferral, Memorandum and Order of May 7, 1987 at 33-8.

On May 21, 1987, Judge Van Sickle held a hearing on how the 78,000 farmers who had received the unconstitutional notice should be treated.

At this hearing, amicus briefs and arguments urging renotification of all affected farmers were presented by the Attorneys General of North Dakota, Minnesota, Iowa, Illinois, and Wisconsin. (These states had been amicus in the supplementary Coleman case from the beginning.) The federal government argued that it should be permitted to continue to process all pending actions even though they were predicated on an unconstitutional process! Judge Van Sickle ruled last Tuesday, June 2, 1987, that FmHA must start over as to 65,000 farmers who were in the administrative pipeline but allowed FmHA to proceed with 13,000 that had already been accelerated. Memorandum and Order of June 2, 1987, at 8-9.

Thus, nine years and many lawsuits later, FmHA still has not complied with the Congressional intent of the 1978 Act.

Only a dismal 636 borrowers, two-tenths of one percent of all FmHA borrowers, obtained a deferral in the first six months of FY 1987. FmHA Farm and Housing Activity Report, March 31, 1987, p. 11. FmHA sent 8,037 acceleration letters in the same six-month period. In other words accelerations were 13 times more frequently issued by FmHA than deferrals were allowed. We would submit that FmHA has its priorities wrong.

With the nine-year history of FmHA's unrepentant refusal to follow the 1978 deferral law, we very much approve of retroactive application of deferrals. Moreover, when these deferrals are calculated compounded interest should be prohibited and retroactively excluded. Compounding interest year after year has dug many farmers into a black hole of debt. Deferred interest and past due interest should be set aside in a non-interest bearing status.

SECTION 3. Loan Servicing.

Section 3 would require timely notification of servicing options.

Judge Van Sickle's May 7, 1987, Order stated that the information statutorily required by this section is required also as a matter of constitutional law. However, you should be aware that Judge Van Sickle (who is clearly aware of FmHA's predilection to keep information from borrowers by use of bureaucratic obfuscation and incredibly complex language and forms) also ordered that the explanations provided by FmHA be "clear and readable" We support adoption of section 3, but urge that you add requirements that all explanations be "clear and readable." Although we believe the Judge Van Sickle decision would be upheld on appeal, adoption of this section would prevent FmHA from filing an appeal.

SECTION 4. County Committees.

Section 4 is clearly in reaction to FmHA's largely successful attempt to subvert the 1986 election required by the Food and Security Act of 1985. Nicholas Spaeth, Attorney General of North Dakota, Governor George Sinner of North Dakota, and many others protested when FmHA issued ex parte interim regulations which largely disregarded congressional intent to democratize the FmHA county committee structure on May 22, 1986. 51 Fed. Reg. 18763. FmHA is still using the interim regulations and has apparently made no evaluation of the public comments it received. As a result of these regulations, FmHA has caused unnecessary litigation. See, e.g. Hedge v. Lyng, Civil Action No. 4-86-610, D. Minn.

The major reforms in this section of S. 1147 are to specifically allow FmHA borrowers to be on county committees, subject to conflict of interest standards set forth in Section 1336. , and to require FmHA to give adequate time to voters to nominate and elect suitable candidates. We urge that it be adopted

SECTION 5. Appeals Procedure.

Inclusion of the three magic words "on the record" is, after the debt settlement provisions of § 1 of S. 1147, the most important reform in this bill.

FmHA now has all appeals heard by FmHA employees who have no legal training and who are integrally connected to the persons whose decisions are being appealed. In adopting its appeal regulations in 1982 FmHA stated that "a special independent body of government employees to handle only FmHA administrative appeals" would provide "a better unbiased system of review." Independent hearing officers were rejected, however, due to FmHA's perception that the cost would out weigh the benefits.[1] See "Supplementary Information" preceding 7 C.F.R. 1900, 47 Fed. Reg. 13758, April 1, 1982.

We disagree. The benefits in having administrative law judges review FmHA appeals far outweigh the costs.

Let us first look at some of the areas in which USDA now affords the use of ALJ's. These include appeals under the Animal Welfare Act, Egg Products Inspection Act, Federal Meat Inspection Act, Federal Seed Act, Poultry Products Inspection Act & Horse Protection Act. See 7 C.F.R. 1.131. Owners of condemned cattle, horse, and poultry carcasses and condemned or contaminated eggs and seeds have more due process rights under federal law than do owners of family farms who borrow from the FmHA. The owner of a condemned chicken carcass has access to an ALJ on a hearing challenging the condemnation; the family farmer fighting to save his home, farm, livestock and his life's investment does not have access to an ALJ. This makes no sense. To put it very bluntly, we believe farmers should have at least the same due process rights as a condemned chicken carcass.

Why are ALJ's necessary? First, FmHA district directors and assistant district directors generally have college degrees in animal husbandry, soil science, agricultural economics or other related degrees. They do not have law degrees. Yet they are asked to determine the correctness of the decision under appeal in light of the statutes governing FmHA. These statutes are, quite simply, inaccessible. There are no copies of the United States Code in FmHA offices even if the FmHA district director knew how to find or interpret the applicable section. Moreover, many of the issues presented to the hearing officer require a determination as to whether the particular regulation at issue is in fact consistent with the law. Many are not, as was graphically illustrated to this Committee a short while ago in connection with FmHA's January 15, 1987, proposed regulations. Finally, issues of interpretation of the terms in mortgages and security agreements require a knowledge of state real property law, the Uniform Commercial Code, general contract law and choice of law principles. FmHA loan officers are simply untrained and unschooled in these areas.

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[1] The "excessive cost" to FmHA was determined by a cost study which included such assumptions as the hearing officers would use driving speeds of 35 miles per hour, trips of over 105 miles one way would require an overnight stay, and all trips over 300 miles (150 one way) would be by air. See May, 1980, Analysis of Appeals Process, available from FmHA. This cost study "proves" that Washington consultants don't leave the beltway. Not even grandmas drive 35 miles an hour in rural areas.

Second, the use of FmHA employees to rule on co-workers' decisions creates an unacceptable risk of favoritism and bias because of the interplay between serving simultaneously as "prosecutor" on some adverse actions while serving as hearing officer on others. For example, in North Dakota, in the six-month period between October, 1986, and March 31, 1987, FmHA sent over 2,000 notices of intention to take adverse action, each giving the borrower a chance for a hearing before a district director (or assistant district director). There are only six districts in North Dakota. The human temptation to process the other guy's foreclosures because he has some of yours must be compelling. Even if FmHA employees try to act impartially, the present situation of simultaneous dual roles creates too great a risk of unfairness.

FmHA has claimed that there is nothing wrong with the present appeal system because of the very high percentage of decisions that it upholds. This analysis is obviously flawed. A comparison to the Social Security appeals system which use ALJ's shows this fallacy. In 1982, 52.7% of all Social Security decisions were reversed by ALJ's on appeal. Operation Report of the Office of Hearings and appeals, Dept. of Health and Human Services, Social Security Administration, Sept. 30, 1982, 55 A. Pub. No. 7-032 (5-83), at 19. Less than 10% of FmHA's adverse actions are reversed on appeal. There is no reason to believe that Social Security field workers are more than five times as inaccurate as FmHA field workers. The difference is that the FmHA appeal process is flawed and fails to require a searching reexamination of internal decisions.

Before closing, one last benefit should be addressed. FmHA appeals take a great deal of time from FmHA supervisors. Overall administration of the program would be improved by use of ALJ's. FmHA is in the most stressed period since the Great Depression. Its workers should administer FmHA loans, not devote scarce time and resources to hearings.

SECTION 6. Compliance with State Law.

We strongly support section 6 of the bill. As you may be aware, FmHA has flatly refused to participate in state mediation programs required by Iowa and Minnesota law. These programs are worthwhile and their successful approach to conflict resolution has been proven. For example, as of February 20, 1987, more than 3,500 mediations had either been completed or were currently in progress in Minnesota. Of these, 2,016 had resulted in debtor creditor agreements: 1,524 during mediation, and 492 outside of mediation. Figures for Iowa are comparable. It is clear that mediation works. It helps keep farmers on the land, creditors in business, and most importantly, it has significantly reduced the threat of violence in the rural areas. Moreover, recent data indicates that mediation is a viable alternative to bankruptcy. An analysis completed by the Center for Rural Affairs indicates that states with mediation have proportionately fewer chapter 12 filings. There is simply no good reason for FmHA to refuse to participate in state mediation programs.

Establishing a one-year period of redemption or whatever greater period is allowed by state law is another good reform. The Attorneys General on whose behalf I am testifying are vitally concerned with this issue. For example, we filed an amicus brief in the North Dakota case of U.S. v. Elverud, 640 F. Supp. 692 (D.N.D. 1986) arguing that the federal court should apply state law to FmHA foreclosures. We regret to say that we lost -- the court stated that the use of North Dakota law was contrary to congressional purposes underlying the FmHA loan programs.

The present system encourages uncertainty, piecemeal litigation, and inconsistencies between states. In Montana and other states in the Ninth Circuit Court of Appeals, FmHA farmers have one year or whatever period is allowed by state law. U.S. v. Ellis, 714 F.2d 953 (9th Cir. 1983). In North Dakota, we have 60 days or whatever period is equitably fixed by the court on a case-by-case basis. U.S. v. Elverud, 640 F. Supp. 692 (N.D. 1986). This is unfair.

Congress allows FmHA to redeem within a one-year period, regardless of state law. See 28 U.S.C. 2410(c). It is only equitable for a farmer to have the same period as does FmHA to redeem.

But we would go further. We believe Congress should clarify that FmHA should be subject to state law unless there is a direct statutory directive to the contrary. FmHA, although it operates to accomplish a social welfare function is, after all, engaging in commerce. The United States Supreme Court in the very important case of U.S. v. Kimbell Foods, 440 U.S. 713 (1987), held that FmHA should be subject to the same rules as any other lender with respect to priority of liens under the Uniform Commercial Code. After Kimbell, however, farmers have been forced to litigate case after case as different state laws are sought to be applied under the three-part Kimbell Foods test: 1) is there need for a nationally uniform body of law? 2) would application of state law frustrate specific federal objectives? and 3) would application of a federal rule disrupt state commercial relations?

We suggest that you consider amending the bill to provide that it is the intention of Congress that FmHA be subject to state laws affecting real property and security interests unless a law enacted by Congress is directly in conflict with the state law.

This would result in several benefits:

1) FmHA actions would be more easily ascertained and predictable.

2) State commercial relationships and expectations would not be disrupted;

3) The state would have greater ability to legislate with an even-handed effect on all lenders.

We also approve of the repurchase preference policy of subsection (b) of § 6. Prior owners deserve the first chance to repurchase as do their immediate families. However, we would urge that the bill be amended to require FmHA to make contract-for-deed financing available to these prior owners and their families. If FmHA has a wealthy buyer who can put down cash or a large down payment and a former owner who needs FmHA financing, we believe the tendency will be to ignore the former owner preference. FmHA's performance in applying the former owner preference in the past year and a half when it approved only 22 repurchases nationwide is illustrative of this tendency. FmHA should therefore be required in the law to self-finance such sales, when the former owner or family cannot. This is not a new financing tool because FmHA now has a regulation which authorizes acquired property to be sold in this manner. See Homesteads, 7 C.F.R. § 1955.73(f).

We also approve of the provision of subsection (b)(3) that would extend a special preference to tribal members or tribes where the property is acquired from a tribal member. Native American farmers and ranchers on a reservation as a practical matter are restricted to FmHA financing and their economic situation is generally more stressed than white farmers and ranchers. Thus, pending FmHA collection actions on the reservations are a major problem to preservation of tribal land and economies. For example, on the Fort Berthold Reservation, in North Dakota (Mandan, Hidatsa and Arikara) one-tenth of remaining reservation trust land is at risk of loss to FmHA. 50-60 Native American farmer-ranchers (virtually every rancher on the reservation) is in financial difficulty with FmHA. With an unemployment rate already hovering at 60%, it would not be an exaggeration to say that the reservation's economy would be crippled, perhaps irrevocably, by loss of this additional land and business. Debt settlement for those tribal borrowers who are still ranching and the special preference for lease back and repurchase by former owners, tribal members and tribes can possibly be the salvation of this and other tribes.

We also support a special preference for other minority farmers. Black land loss is a serious problem. FmHA is a major lender to blacks, many of whom face FmHA foreclosure.

Again, it is crucial that the tribal member preference and minority farmer preference include a self-financing feature by FmHA.

SECTION 7. Farm Leaseback Program.

In 1985, Congress sought to have FmHA give a special preference to prior owners to lease back their homesteads and farms and to allow such leases to be negotiated before FmHA acquires title.

FmHA's record in the last year and a half has been worse than dismal. Although FmHA owns 1.5 million acres of farmland, it has approved leases to only 85, only 22 farmers have been able to repurchase their farms and only 116 have been able to retain their homestead. FmHA has required liquidation before considering lease applications thereby causing the unnecessary dismantling of cattle herds and machinery.

The proposed amendments would facilitate implementation of 1985 congressional intent and should be adopted. Congress may also wish to consider requiring additional protections. FmHA by regulation allows a prior owner only thirty days to respond to an announcement of leaseback availability. The response time should be rationally related to the cropping cycle and should allow the farmer adequate time to determine whether renting is economically feasible, i.e., can the farmer obtain crop financing.

Also, FmHA should be required to explain the leaseback program in plain language.

Another amendment we recommend is suitable tenure terms for farmland leases. FmHA has by regulation generally allowed only yearly leases. Availability of up to five-year leases would be much better for farmers. It would also promote appropriate care of the soil and facilitate the farmer's ability to obtain crop and chattel financing.

I have attached a recent AN From FmHA in which FmHA strongly discourages rental of farmland. Attachment B. Clearly strong legislation is needed to counteract FmHA's strong disinclination to allow leases.

SECTION 8. Income Releases.

These amendments would help farmers. Very little explanation has been provided by FmHA to farmers as to how to plan for and to obtain releases. The forms used by FmHA (the infamous 1962-1 Form) for releases have been difficult to understand and frequently impossible to apply.

FmHA now freezes releases and offsets farm program payments upon acceleration. See 7 U.S.C. 1985. This was an improvement over pre-Coleman practices when FmHA froze releases when it internally decided to liquidate and before notice to the farmer and opportunity for a hearing. This is not enough now because farmers who are attempting to negotiate settlements, homestead retention or leasback need farm income while they are negotiating workouts.

Farmers cannot survive long when FmHA refuses to release. A 100% wage garnishment is not allowed for wage-earners; a 100% seizure should not be allowed for farmers.

SECTION 9. Homestead Protection.

This section shores up congressional intent in the 1985 Food Security Act. The elimination of the $40,000 limitation will help small and minority farmers. It allows homestead retention as well as essential outbuildings. The consideration of rent helps those who were shut down by economic hard times but who still with to keep their home. It also allows negotiation of homestead retention before loss of title to FmHA. We support its adoption.

SECTION 10. State Policy Boards.

If FmHA is viewed as an economic development program for rural America, then it is the best program that rural America has. It provides capital and good loan terms to over 240,000 small business (farms) throughout America. We very much want FmHA to continue its historic role and function in rural America. The complexities of FmHA programs and the impact it has on each state for good and for ill, means that local oversight and collection of data is much needed. The state policy boards would be very helpful to ensure proper directions and sound administration and to correct problems before they become crises. We therefore support the establishment of state policy boards.

The Attorneys General Spaeth, Humphrey, Miller, and Hartigan would be please to help this Committee in any way possible. Thank you for the opportunity to testify.

ATTACHMENT A

WORKSHEET FOR ACCEPTING INVENTORY PROPERTY

The following estimate should cover the full time it is estimated that FmHA would have the property in inventory.

1. MARKET VALUE OF PROPERTY (Part 7, Form FmHA 422-1) $222,000

2. CAPITALIZATION VALUE OF PROPERTY (Part 3, Form FmHA 422-1) $______ FmHA [illegible]

ESTIMATED HOLDING PERIOD IN YEARS 2

3. ADDITIONS

Rent 12,096 x Holding Period 2 = 24192 [From part 5 of Form 422.1]

Royalties – x Holding Period – = –

Other yearly income – x Holding Period – = – –

Yearly % Land Increase ____ x Holding Period – = –

Other (Describe) ______ = –

TOTAL ADDITIONS $24,192

4. DEDUCTIONS:

Payment of Prior Liens = 101,553 [PRIOR LIEN payoff] 1250 [1985 TAX]

Other Acquisitions Costs = 2000 [Abstract, Attorney Fees]

Taxes & Assessments 1250 x Holding Period 2 = 2500

Depreciation 3442 x Holding Period 2 = 6884 [Bldg value x 5%]

Management Costs 605 x Holding Period 2 = 1210 [Rental x 5%]

Essential Repairs to Secure & Resell = ______

222,000 x 8.[illegible] [illegible]

Yearly % Land Decrease ____ x Holding Period 2 = 30,770 [ND 422-1A Exh B USE AVERAGE of 3 years]

Resale Expenses (Commissions, Advertising, etc.) = 11,100 [5% of Market Value]

INTEREST COST

A. MARKET Value #1 222,000

B. Interest Costs at 10% 10% x Holding Period 2

Total Interest Cost A. 222000 x B. 20 = 44,400

Other (Describe) ______ = ______ [weed control?]

Value Loss (if any)
(Market Value 222,000 - Capitalization Value 202,000) 20,000

TOTAL DEDUCTIONS $221667

. POTENTIAL MARKET VALUE

1. 222,000 + 3. 24,192 - 4. 221667 = + $24,525 *

* IF this figure is positive FmHA will Take The PROPERTY into Inventory.

ATTACHMENT B

2-13-87 - FOR YOUR INFORMATION - TO ALL FIELD OFFICES IN NORTH DAKOTA

[illegible]

From: FMHA.ADMIN
To: STATE.DIRECTORS
CC: NO.FREPD, BBRISCOE, MCHIAVETTA
Subj: Leasing & Sale of Farm Inventory

February 13, 1987

SUBJECT: Leasing and Sale of Farm Inventory Property

TO: All State Directors, State Directors-at-Large
and Farmer Program Chiefs, FmHA

You are to IMMEDIATELY carry out the policy found in the regulations limiting the leasing of certain farm inventory property. FmHA Instruction 1955-B, Section 1955.66, states that leasing may be used when it is CLEARLY in the best interest of the Government. This means that a lease will be signed only if it is determined that it is in the Government's best financial interest to lease the farm. This decision will be made by the State Director on a case by case basis.

YOU MUST CONTINUE TO OFFER TO LEASE FARMS TO PREVIOUS OWNERS OR OPERATORS of the property. Such leases will be offered for a period of one year, renewable annually for up to 5 years, provided a feasible plan can be developed and the other requirements in Section 1955.66 of FmHA Instruction 1955-B can be met.

You must also continue to offer to lease under FmHA Instruction 1955-B, Section 1955.73, Farmer Program Dwelling Retention.

You may continue to lease non-farm property and dwellings.

In all other instances involving leasing, please take the following actions:

1. Immediately suspend leasing efforts where a pending offer has not been accepted in writing and where it cannot be shown that it is in the Government's best financial interest to lease the particular farm. This determination will be made by the State Director on a case by case basis.

2. On any existing leases, continue with the lease until the expiration date of the lease. This means that the lease renewal is not automatic as it must be determined to be in the Government's best financial interest to continue with the lease. A farmer who is currently leasing FmHA inventory property may have the lease renewed only on the explicit approval of the State Director if the County Supervisor determines that the renewal is essential to maintain a feasible operation for the ensuing crop year.

3. On any FmHA Inventory farm that will not be leased, the property will be managed as follows:

   (a) When the property will not be leased as set forth in (1) or (2) above, it will be held in inventory under a caretaker or management agreement in accordance with Section 1955.65 of FmHA Instruction 1955-B when such an agreement is necessary to preserve and protect the property.

Senator **Conrad**. I was amazed by the testimony of Mr. Clark on the question of the cost of this bill. It was irresponsible of him to testify the way he did, and it was irresponsible of him to testify that it is a $7.6 billion giveaway because one, it gave no credit to the collateral value. We would be writing down only to market value. Obviously there is collateral value. Two, it gave no recognition of what has already been lost. We have a USDA estimate of some $2.7 billion. We know from his own testimony 75 percent of the $7.6 billion that is delinquent has been delinquent for more than 3 years. And three, he provided no recognition of the cost of liquidation or foreclosure.

You provided some estimates based on a theoretical farm size of the cost of liquidation and foreclosure. If he was going to come in here and be serious about giving an estimate of the cost of this bill, I would have given him some credibility. If he would have said we believe there are some costs, albeit probably not very high if one wants to compare apples to apples and admit the loss that has already been realized, simply not recognized, and also to take account of the collateral value which would remain and to the cost of liquidation and foreclosure, I would have given him some credibility.

That would be an honest, serious-minded attempt to cost out this bill. Obviously he made no such attempt, and that is troubling. We deserve more than that.

Ms. **Vogel**. He is evenhanded, however. That is exactly what he told the House a month ago on their bill.

Senator **Conrad**. Oh, did he?

Ms. **Vogel**. Yes.

Senator **Conrad**. The same thing?

Ms. **Vogel**. The same thing. If you adopt this bill, we will lose everything.

Senator **Conrad**. Yes. Well, obviously that is disappointing. That is serious. And that testimony cannot be taken seriously.

Next we will hear from Ralph Paige, the Federation of Southern Cooperatives/Land Assistance Fund. Senator Fowler told us he cannot be here soon, so we will proceed. He sends his regrets. He says he is happy that you are here, and we will proceed, and then when we are finished, I have a couple of questions I want to address to all of you before our next panel.

STATEMENT OF RALPH PAIGE, EXECUTIVE DIRECTOR, FEDERATION OF SOUTHERN COOPERATIVES/LAND ASSISTANCE FUND, ATLANTA, GA

Mr. **Paige**. Thank you. Inform the Senator I will give him a private account of my presentation at his convenience. I am Ralph Paige, executive director of the Federation of Southern Cooperatives/Land Assistance Fund. I have served as executive director for the past 3 years. For 15 years prior to my appointment as executive director, I worked in various other field staff and programmatic positions for the organization. I am based at the Federation/LAF's Administrative and Fundraising Office in Atlanta from which I work throughout the Southeast region.

The Federation of Southern Cooperatives and Land Assistance Fund works with over 15,000 black family farmers whose average land holding is 100 acres or less. These farmers are organized into self-help cooperatives and community based associations to collectively pursue purchasing, marketing, and technical services. The Federation provides the central information, training, resource and technical backup support for this network of cooperatives, credit unions, land associations and other groups. The Federation/LAF also serves as an advocate for black farmers with Federal and State agencies, land-grant colleges, corporations, and other groups.

I am here to speak wholeheartedly in favor of reform of the Farmers Home Administration's credit policies and programs. We support Senator Conrad's initiative, S. 1179, however, we feel it would be strengthened to embody all 10 recommendations in the National Save the Family Farm Coalition's platform on FmHA credit reform.

Government policies and programs in agriculture, for the past half century, have been enacted in the name of family farmers, but have been utilized to strengthen and enrich the larger farmers and the corporate sector in agriculture. Under the FmHA and most other USDA programs, the top one-fifth of the largest farmers receive a disproportionate three-fifths or more of the benefits.

The current economic crisis in agriculture and rural America is accentuated for black, other minority and limited resource farmers who have for years been struggling to make a subsistence income on the edge of poverty.

For black farmers in the rural south, there has been a "continuing crisis" for the past 75 years. Black farmers have faced not only the general decline in the farm economy, but also neglect, racial discrimination, and economic exploitation from the system. Black farm ownership and population has declined steadily and at a more rapid rate than that for white farmers for the most of this century.

In 1910, there were over 1 million black farmers owning 15 million acres of land, while by 1980 there were less than 100,000 black farmers owning less than 6 million acres of land. Black farmers are still losing land at an astounding rate of 1,000 acres per day or a third of a million acres per year.

The U.S. Civil Rights Commission, in a report entitled, "The Decline of Black Farming in America," published in 1982 found there were only 57,000 black commercial farmers, with sales above $2,500 annually, owning 4.7 million acres of land, left in America. This report warns that unless the policies of the U.S. Department of Agriculture are changed, then "there will be no more black farmers by the year 2000."

We understand that the Congress is debating and legislating on credit reform in an effort to stabilize the Farm Credit System. Black farmers have by and large not benefited from the Farm Credit System, that is, Production Credit Associations, Federal land banks, and the Bank for Cooperatives. Black farmers, because our operations are smaller and less well capitalized and because of the historic patterns of neglect and discrimination by the Farm Credit System, have not received a fair share of the benefits from the Farm Credit System.

Based on a survey of our members and other black farmers, we can report that: Less than 2 percent of the borrowers of the Farm Credit System are black or other minority farmers; to our knowledge, there are no local or regional black board members on any of the banks in the Farm Credit System; efforts are being made by the Farm Credit System to foreclose on the few black farmers who have received loans, rather than to assist them with other options.

Because of the miserable record of the Farm Credit System, credit reform legislation, which does not deal with the problems of Farmers Home Administration, will not materially assist black farmers. The FmHA, although far from perfect, does have a more extensive record of service to black, minority, and limited resource farmers.

The Farmers Home Administration reform legislation before your committee, S. 1179, and other suggested legislation, needs to be strengthened in the following manner:

One, adding specific language to the legislation requiring affirmative action in the distribution of FmHA and other USDA program benefits, and the selection of State and county committees to administer the FmHA loan programs in a nondiscriminatory manner.

Two, allowing State and county organizations of black and other minority farmers to nominate a list of minority persons for which the minority representatives will be chosen to serve on these committees.

Three, giving black and other minority farmers priority and preference in distribution of program benefits, for example, FmHA limited resource loans at lower interest rates, sale of property in inventory after giving the original owner the right of first refusal, deferrals, and writing down of interest rates and costs on loans.

Four, developing a set-aside program, ensuring that in counties with 5 percent or more minority farmers, that the proportion of Federal funds provided by USDA programs, for example, FmHA loans, ASCS conservation programs, extension service research and resources, Forestry Service assistance, be at least equal to the proportion of minority farmers in the county.

Five, supporting changes in particular regulations of the FmHA loan programs which are harmful to minority and limited resource farmers, for example, the $40,000 income requirement on the homesteading provisions for farmers facing foreclosure; arbitrary delays in loan processing; utilizing administrative law judges to make FmHA appeals process more equitable. Some of these changes have been incorporated in S. 1179, and we support that.

Six, supporting programs which would assist and support young people, particularly minority youth, to get involved in agriculture and farming.

In conclusion, let me suggest that the farm credit reform by itself would not be enough. We must also have action by the Congress to raise farm commodity prices or farmers will never be able to repay the funds they have borrowed regardless of the terms and the credit reforms. For this reason, the Federation of Southern Cooperatives and Land Assistance Fund has joined with other grassroots farm organizations in the National Save the Family Farm Coalition to urge passage of the Harkin/Gephardt "Family Farm

Act" which includes both price and credit provisions that will benefit family farmers.

Senator **Conrad**. Thank you very much. I want to ask one question, and then I am going to defer to my colleague from Iowa. You all heard Vance Clark, Administrator of FmHA, say that they are doing everything possible, everything possible, to restructure loans, to work with people to make it possible for them to stay on the land. I would like to know each of your reactions to that statement. From your experience, Mr. Massey, are they doing everything possible they can to help?

Mr. **Massey**. Well, we certainly do not think so, Mr. Chairman. We have taken depositions of a lot of county supervisors, of State directors, and of State farm program chiefs. I have talked to some of them less formally as well. I think one of the problems is that they do not understand how their own procedures work and cannot explain them to farmers.

One of the things Judge Van Sickle found in his June 2 order is that there is not adequate information provided to the borrower to meaningfully fill out FmHA applications and make a presentation. At the same time, the burden of proof is on the borrower. They have to show that they are entitled to the programs.

The Government said in its documents, and the Justice Department lawyers argued in court, "Well, that is OK because there is always information available at the office. It says right here on this form. You just come on into the office, and we will provide you with what you need." But, after a year of litigation and depositions in which we absolutely scoured those offices for such information, the judge concluded there has never been such information. He said that the plaintiffs proved by uncontroverted evidence that the information does not exist.

So, whether through a conscious effort to sabotage the programs that Congress passes or from an absolute breakdown or dereliction in execution of these programs, the result is, as we learned last week from county supervisors we deposed with respect to the county committee elections, they just cannot do their jobs out there. We asked, was the 5 days you were allowed by regulation enough time for you to post notices and handle a nominating period for countywide elections? Each one of them, up through and including the State director, said no, we could not do it in that timeframe.

And what is the Government's argument in this litigation? Well, farmers had plenty of time. Five days was ample time in the early part of June when it was raining like crazy and we were out of the fields in Minnesota to come to town and nominate your candidate.

Let me close by giving you an indication of how I spent my day so far. I got up this morning and had a conference call with one of the attorneys on my staff and a client in western Minnesota. I received a call from my wife last night saying that we had a problem, and I needed to take some action this morning. She had received a call at home. This goes back to the sparks, the brushfire and the conflagration discussion.

What had happened is that my client was informed by a contractor that they were coming to his farm today to do a security check—with Farmers Home. As an aside FmHA has apparently quit hiring staff out there. That is something the bill does not address, but one might be concerned that in counties in Minnesota, the staff does not do anything anymore. They contract out all their functions, which suggests to me an attitude that this program is not a permanent one or something. But that is a different issue.

So this contractor had called my client and said we are coming out to do a security check on your farm. We are going to come out and count the pigs and the tractors and so on. Now, this is a normal sort of activity; the check itself was not the problem. However, my client said, "well, that is not a convenient time when you have said you are coming out. I am going to be busy." The contractor said to him, "look, we will come out when we want to and we will do exactly what we want to. And if you are not home, we will come out and poke around your property and go in your hog house and do everything else we want to because the county supervisor told us we should." And that we could.

Now I had a real angry client this morning. And he had a couple friends coming over and was going to be there to greet these people, and that is the kind of situation this creates. When you couple that at 6:30 a.m. conference call with sitting and listening to what Mr. Clark had to say here today, with listening to Ralph Paige's testimony with thinking of a 30-year-old black farmer in North Carolina who just came to North Dakota to testify last week who claimed that an FmHA employee falsified his records, a claim that was investigated by FmHA and which concluded that the county supervisor indeed falsified the records, but that he was authorized to do so, to change history in this young farmer's records, and then go and get a ex parte temporary order to go out and seize this man's pigs and put him out of business without ever having a day in court, you begin to understand what kind of people we are dealing with here. They are not rational. They are not reasonable. They are not credible.

I think the time has come for this committee and this Congress to do exactly what Senator Melcher said, and what the other members have suggested, to not only expect but to demand some cooperation. We cannot do business out there as public servants, as attorneys representing farmers and as citizens when we have these ideologically driven people committing mayhem in community after community after community around this country in ways that I have not seen since I went into the worst prison situation as a lawyer in 1974. A bit of advocacy on behalf of its inmates, and it was absolute chaos: murders, knivings, assaults on guards and everything else. And it took us and the Justice Department 5 years to undo that damage and to put that place into a reasonably livable situation. And I, with all honesty, since I walked into that prison in 1974 have never seen anything to equal it until I got involved in Farmers Home litigation.

Senator CONRAD. Anybody else want to comment on Mr. Clark's assertion they are doing everything?

Ms. VOGEL. Yes.

Senator CONRAD. Sarah, you go first and then we will get Gene's reaction.

Ms. VOGEL. I think one of the things they are doing is they are doing everything they can to resist many of the requirements that

Congress has imposed. This morning, Mr. Clark was talking about how well they are doing on homestead retention, farmland lease back and so forth. It is ridiculous; 22 farms, nationwide, farmers have been allowed to repurchase their farms. They have 1.5 million acres of farmland. That is absurd. Congressional intent is not being implemented.

The forms that FmHA gives to the farmer are illegible. By the way, that is one of the suggestions that we do have for your bill. The bill says FmHA shall explain its programs. That is not good enough. You have to say FmHA shall explain in clear and readable language because otherwise it may come out in the most outrageous bureaucratic gobbledygook. And it is just not fair. Lawyers cannot understand that stuff, much less farmers who have other work to do.

FmHA has been resisting implementation of the deferral program for 9 years. The Congress adopted it in 1978. FmHA ignored it. Congress passed resolutions telling FmHA to use it. FmHA ignored the resolutions. Lawsuits were brought and judges finally said you must implement the program, and so on. FmHA finally started telling people about the deferral program in November 1985. But Judge Van Sickle said the forms are unconstitutional in May 1987. In other words, FmHA has resisted telling farmers about the program for 9 years. This resistance has caused many personal tragedies and I do not understand why. I simply do not understand why they fight so many of these good common sense things so hard.

Senator CONRAD. I think maybe the attitude we saw evidenced this morning is one of the reasons why.

Senator HARKIN. Well, Sarah, I do not think it is too hard to understand when you figure out where they are coming from. Jim had it right. It is an ideologically driven policy of the Farmers Home Administration. They came in 7 years ago committed to the philosophy that there was an excess of labor in agriculture. They have been preaching that for a long time. An excess of labor means there are too many farmers out there, so FmHA has worked to get rid of farmers one way or another. I have been through this before on the House side when I served on the House Agriculture Committee when the Farmers Home Administration first came in.

There was no doubt in my mind, at that time, that they wanted to wind down and wrap up Farmers Home Administration, and do what they could to get those farmers who were Farmers Home borrowers not only out of Farmers Home, but also off the land.

Ms. VOGEL. You know there is a lot of talk——

Senator HARKIN. It is not hard to understand where they are coming from, you see. You just have to understand where their heads are, then, once you understand where their heads are, you know who they are, you see?

Ms. VOGEL. There is a lot of talk these days about free enterprise, developing and fostering small business and economic development. Farmers Home is the best economic development program rural America has ever seen or ever will. We need it and we need it to run well.

Mr. PAIGE. I would simply like to say that it is business as usual with FmHA as far as the black farmers and small farmers are concerned and there is a tremendous need to put affirmative action into the proposed legislation that we have testified to this morning. There is no other opportunity for black farmers to be saved unless something is in the pending legislation. We have never had the opportunity before to support a bill or to work with farmers.

I hold that if it was not for the crisis that all farmers are in now, this hearing would not be held. If it were only black farmers the remaining 57,000 would go out of existence. We have tried for several years to talk about it, and this is the first opportunity we have ever had to have some real input, first through the Family Farm Coalition and now this. So we are grateful for that.

But also the statistics speak for themselves. The revised statistics show that there is under 40,000 black farmers. When white farmers lose land, white farmers or someone else white buys it back. When black farmers lose land, we cannot buy it back. We cannot afford it. So we are talking about a real problem, the issue of social justice here as well as agricultural rural economic development. Black people in this country will not be owners of land, and that has a serious consequence. So the matter is very serious.

We can look in the paper. I had a friend to send an article where there are foreign investors. I have no objection to that, getting together investment groups to buy land. That has happened in Georgia, most recently where they bought up several acres of land. This land, the Department of Agriculture, or FmHA is going to lose, they could buy land now at the average of $400 an acre, and it goes up 3 years from now to $800, they have lost $400 there off the bat.

If the farmer could keep it and have a write-down, that means FmHA would gain, because they would still have the paper on it. They would gain $400 per acre. There are serious consequences if we do not have some legislation now. I am sure the Department talked about there is no discrimination, but you know it is out there. I know it is out there. It is happening. Farmer loans are being systematically late. You apply in early January or November, and you do not get the loan until over a year later. Your credit committee, who in some cases do not act on the loan so these are serious things we need some help with. And this is the only opportunity I see to making that happen.

Senator CONRAD. Gene.

Mr. SEVERENS. Yes, just a few brief comments on your question, Senator Conrad. I think that the discrepancy between congressional law and policy and Agency commitment is as big a gap as exists in the Federal Government in the case of Farmers Home Administration.

And I think that Senator Harkin has hit the nail on the head. The common denominator of everything that has been said today, including Vance Clark and our complaints here, is that Farmers Home Administration is out, closed the doors of that Agency.

Mr. Clark's most serious reservation to your bill, Senator Conrad, was not that it was $7.6 billion giveaway. I think he responded to that point very well. His main objection to it was it implied an ongoing commitment. He wants to close the doors. They do not want any more ongoing commitments. That is why they are classifying inventory property as surplus rather than suitable. Sell it as surplus, sell it for cash, no more ongoing commitment. Sell it as suitable to an FmHA eligible borrower, you are implying and inviting the Agency to continue to exist.

I think they are bound and determined to sidestep every law that we pass if it implies an ongoing, continuing Agency relationship to this public policy. And that is why Sarah is right that anytime we write a Farmers Home law, man, we have got to dot the "i's" and cross the "t's" because they are going to find some way or another, and they will fight it in court and they will drag it out to interminable ends to avoid doing anything that implies an ongoing commitment. They want to close the doors. I think Senator Harkin is right, and I think that is what we are up against.

Senator CONRAD. Senator Harkin.

STATEMENT OF HON. TOM HARKIN, A U.S. SENATOR FROM IOWA

Senator HARKIN. Mr. Chairman, thank you. I apologize for getting here late. I just want to welcome all four of you back to the committee again, and to say it is good to see you again, and to congratulate you on the fine work all four of you have been doing for a long time. Not only farmers, themselves, but others who live in rural areas and small towns and communities across America, owe you four a great debt of gratitude for all that you have done and hanging in there and keeping up the good fight. You are really the shock troops out there on the front lines. It has been a long siege over the last few years, but hopefully it is drawing to a close. The efforts you have made in the legal field, especially Sarah and Jim, have kept this thing alive.

And Mr. Paige, what you have done, and Gene Severens in Nebraska, all of you have done a great job, and I really appreciate it very much. Just keep it up. Do not let them grind you down.

Mr. Chairman, I have a letter here from the Equity Control Corporation of Clear Lake, IA, dated May 21, 1987, that I would like to have inserted in the record at this point. Basically, this letter tells what Farmers Home Administration is doing. The fact is they are not doing anything to reach any kind of accommodation with those they have liquidated and closed out. As an example, here is a couple that have an approximately $50,000 deficiency with Farmers Home. They have nothing left. Absolutely nothing. They were led to believe that, with full cooperation with Farmers Home, they could offer between 5 and 10 percent of the deficiency amount to Farmers Home over a period of 5 years at no interest. In this case, the Maschings offered $5,000 to settle an approximately $50,000 deficiency. They have no farm or business assets, yet they offered anyway.

The local Farmers Home office refused this offer and said they wanted more, even after admitting the Maschings did not have the ability to pay. That is the kind of thing FmHA is doing.

I would like to insert the Equity Control Corporation letter for the record.

Senator CONRAD. Without objection.

[The letter follows:]

EQUITY CONTROL CORP.
705 7th Av. N.
Clear Lake, Iowa 50428. Ph. (515) 357-8575

1987 MAY 29 AM 9 41

May 21, 1987

Senator Tom Harkin
Room 317
Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Harkin,

I am writing in regards to Mr. and Mrs. Jim Masching of Carroll, Iowa. Recently this firm helped the Maschings' to liquidate their farm operation under the direction of their Bank and the FmHA, State and Local offices. We were led to believe that with full cooperation, we could offer between 5% - 10% of the deficiency amount to FmHA over a period of 5 years at no interest. In this case, the Maschings' offered $5,000 to settle approximately $50,000 deficiency. They have no farm or business assets to pay such an amount but yet they offered anyway. The local FmHA office at Jefferson, Iowa, refused; they said they wanted more even after admitting the Maschings' did not have the ability.

This kind of behavior on the part of the FmHA Office is appalling and embarrassing. It appears they are after blood money or trying to force Bankruptcy. In fact, our office works in eight states; in my opinion, we have more trouble with the FmHA Jefferson Office than we do with all the other offices in eight states combined. Please look into this matter for us. Possibly an investigation of this office would be in order. Thank you in advance for your consideration.

Sincerely,

Jerry

Gerald B. Murphy
President

This is an example of how
FmHA strings people out even when
they agree to Liquidate!!!
No promise of settlement up-front
They just plain punish people!!

Senator HARKIN. I would like to ask Jim and Sarah, maybe you covered this before I came in, but what were Judge Van Sickle's decisions as of a couple of weeks ago?

Mr. MASSEY. Mr. Chairman, Senator, there were two decisions, one May 7 and one June 2. So within the past month, there have been two.

Senator HARKIN. In regard to the June 2 decision, what does that decision mean for FmHA now? Can Farmers Home still go out and foreclose? What does it mean?

Mr. MASSEY. For the record I have given the committee a memorandum from our office that we have issued. It will essentially be a public document so I have asked that it be put in the record—that answers that question in some detail. Let me briefly respond. The May 7 order the judge issued, held that the notice of intent to take adverse action procedure, with which I know the Senator is familiar, which was adopted on November 1, 1985, and has been sent to, I do not know how many tens of thousands of FmHA borrowers—there is a discrepancy in the numbers that we hear—was unconstitutional in three respects.

The judge did not issue an injunction on that date that stopped any ongoing liquidations or foreclosures that Farmers Home was engaged in. We went back to court and had a hearing on May 21, I believe, and asked the judge to issue a broad injunction stopping Farmers Home from proceeding with liquidation of any of those persons who had received the notice and from using the notice to initiate any other liquidation or collection actions.

The judge kind of split the pot, if you will, and as a result, there are three categories of people under the judge's current injunction. Those persons who have not yet—actually there are four. But the judge threw out the whole procedure and said that the Government could not use it in its current form to initiate any further liquidation procedures. In other words, until they change that form and then file it with the court, and the court is satisfied that it is in the office as it should be, they cannot start any new ones.

As to the people in the pipeline——

Senator HARKIN. Yes. What happens to those people?

Mr. MASSEY. Those are the people we are really concerned about. We are not sure how many. Our numbers indicate that there are at least 65,000. The Government seems to suggest fewer. But there are 13,000 of whatever the total is whose loans have been accelerated. That is the point at which they lose their right to income from farm production resources and also to receive ASCS program payments. The judge did not issue an injunction of any lasting duration for these people. He basically created a window of breathing space which will probably end up being about 60 days in which the Government is temporarily stopped from continuing any liquidation or foreclosure against the 13,000 on the theory that will allow those people to assess their situations and take individual action.

Now, unfortunately, the judge has not provided for any form of notice to that group, and that is our next step, in addition to asking the judge to broaden the injunction. We are going to go back one more time, try to convince the judge to broaden the injunction to include those 13,000 because there is really no distinction between them and the others in the pipeline other than the fortuity of bad timing. And at the very minimum we will ask him to require a notice to be issued to those people advising them to take individual action if they choose to do so.

As to the remaining 50,000 or 60,000 or 70,000 people who are in the pipeline but not yet accelerated, the judge enjoined the Government from proceeding and threw out everything that has been done. As far as we read the order that will require the Government to start all over again with corrected procedures for those people.

One of the things the Government has said is that this is nothing but a Pyrrhic victory. It only buys time for people who are not going to make it anyway. And that is really rubbish for two reasons.

One, this is not merely a technical decision. It is substantive because the court ruled that the unconstitutionality was in the deprivation of access to programs designed to avoid foreclosure or liquidation. Borrowers simply were not allowed or able through this procedure to get to some of those programs.

Two, I think that because of this legislation and other similar bills in Congress, the window of time now is of the utmost importance. If these people had access to meaningful debt restructuring a great number of these tens of thousands of people would, in fact, even those with unbearable debt burdens today, be able to show a positive cash-flow. We are the first to admit that you cannot cash-flow something that will not cash-flow. That is why we are here.

If this Agency would use the 1985 authority as it was intended, or if this bill passes and makes it very clear that FmHA has to provide debt settlement in an early enough stage, then that window of opportunity can lead to meaningful restructuring for a great number of those tens of thousands of people.

Senator HARKIN. I guess what I do not understand is why there is a differentiation between those who have been accelerated and those who have not been accelerated.

Mr. MASSEY. Well, from our judgment there really is not, and I think there are two or three explanations to that part of the decision. First, the Government came in with a $969 million price tag attached to those 13,000 people. They said this is a billion dollar ticket item here, judge. The judge said he was not impressed with the numbers, but those are big numbers. Second, I think the Government once again obfuscated the situation and convinced the judge that the great majority of those people were totally beyond hope, that they were out of farming, that they had given up. They had gone to town and were drinking coffee or something, but that is just not true.

Senator HARKIN. Are you saying those are the accelerated ones?

Mr. MASSEY. The accelerated ones. And it is just not true. Every accelerated client we brought up there to put on testimony from, in fact, is still farming and attempting to maintain a viable operation and so on.

I think, third, quite frankly, the order represented the judge's attempt to balance what he perceived to be an unfortunate situation that resulted from the Government not telling the truth from the beginning about its procedures, which led to the judge denying the preliminary injunction we asked for last year. In March 1986, the judge said, "I'm not convinced that you are going to win this, so I am not going to give you a temporary injunction now." A year passed, and the Government said, "Your Honor, we proceeded on the strength of the indications we got from the court." Our argument, of course, was that they proceeded at their own risk and gambled, and when you gamble you've got to pay to play.

I think the judge felt there was some need to balance out what he felt to be, I guess, the overall public equities. And of course, we strongly disagree with that, and we think it is unfortunate. We are going to ask him to reconsider that part of the order.

Senator HARKIN. I am sorry, Mr. Chairman. Thanks Jim, for that explanation. I do not know that it really clears it up, but, I understand the explanation. I am just not sure that it is correct.

Mr. MASSEY. Well, we are not happy with it obviously.

Senator HARKIN. Are you happy with half of it?

Mr. MASSEY. Yes. We are happy with the part that works, and our clients are not happy obviously with the exclusion.

Senator HARKIN. Ralph, let me say that your suggestion on the set-aside is a good suggestion. We will see if we can get that put in the bill. It is an excellent suggestion that we make sure, where there is a minority group in any county, there is some land set aside and make sure that the minority group's members receive that land.

Mr. PAIGE. As precedent for that, SBA already has set-aside.

Senator HARKIN. Yes, absolutely.

Mr. PAIGE. And the recent defense, set-aside; for some minority contractors, and I think this should be the same thing.

Senator HARKIN. Precisely. Thank you all.

Senator CONRAD. Thank you. I want to thank the entire panel. We appreciate it very much. Let me just say that we still have four witnesses, and we have to be out of this room at 12:30 pm. That means I am going to ask all four of the remaining witnesses to join us at the table now. That would be Gary Bergstrom, the vice president of the National Bank of Harvey of Harvey, ND; Lonnie Parsons, the Western State Bank of Devils Lake, ND; Cecil Huff who is a dairy farmer and cochair of the Credit Committee of the National Save the Family Farm Coalition of Ava, MO; and Dr. Max Glenn, a farmer and executive director of the Oklahoma Conference of Churches.

If all of you would take your positions and I think in order for us to meet our time commitment, we are going to have to limit each of the witnesses to a 7 minute statement. All of the statements will be included in the record. If you can summarize your statement for us in 7 minutes, that will leave us a little bit of time for questions, and we will proceed from there.

Gary Bergstrom, president of the National Bank of Harvey, welcome. Thank you for coming and for participating in this hearing, and if you would proceed with your testimony.

STATEMENT OF GARY BERGSTROM, PRESIDENT, THE NATIONAL BANK OF HARVEY, HARVEY, ND

Mr. BERGSTROM. Thank you. It is an honor to be able to share some of the thoughts from my perspective relative to functional changes, primarily, what I think would be of help in making

FmHA programs more usable. Some of the testimony heard earlier leveled a lot of criticisms at banks for not using the guarantee program. So I will specifically have some of my remarks refer to that particular problem.

Our bank is about $23.5 million in total assets, and Harvey, ND is 2,600 in population. I think that it is imperative that we find a way to send cost efficient funds to agriculture in North Dakota, or small towns like ours, including the business communities that support these farmers are going to dry up.

We have already seen tremendous signs of that happening in many towns. Particularly, as far as we are concerned, we have been very active in using SBA loans to finance small businesses over the past few years. We find the program works quite well. In fact, we have an extraordinary relationship with the SBA regional office and are able to accomplish many things, and of the 30 to 40 loans that we have made in recent years we have only had one loan to this date go bad—that did not make it. So I think we have some amount of success in this, and I think that helps build our rapport.

We have not used the Farmers Home Administration guarantee in the past because of several things, and I think it is a program that could be used if there were primarily three or four changes made to it so that it would be more usable by bankers. The first change that I think needs to be made to the guarantee is how the loan is paid out, how the guaranteed portion is paid out upon default.

And I think that basically what it amounts to in an SBA loan the guaranteed portion is paid out, I believe, and I am not an attorney, and I do not have all the legal ramifications and answers, but I believe it is 90 days after it has been declared in default, the person holding that guaranteed portion can request a payout. And it tends to lend a lot of confidence in the secondary market, or the holders of those guarantees, that, indeed, this is a type of loan that will be paid out promptly and, therefore, when they are bidding for those funds in that secondary paper, they will pass on more cost efficient, lower rate funds to the borrower, which I think has to be done.

Senator CONRAD. What happens with the FmHA guarantee program?

Mr. BERGSTROM. As I understand their policy, you have to go through the liquidation of the borrower first, and then it is paid out on the loss that is incurred. It is not upfront and then you liquidate. It is liquidate first and then pay off the guarantee afterward. And with the current bankruptcies and so forth, that might be years and years down the road.

Senator CONRAD. So that makes it very unattractive for a banker to cooperate.

Mr. BERGSTROM. Right. It is primarily the banker and the secondary markets that you are probably going to be working to sell that guaranteed paper through like we do SBA loans.

Senator CONRAD. OK.

Mr. BERGSTROM. So that is one area that needs to be changed to make the guarantees more workable.

The second change is some more of what has been addressed here, and that is the seemingly adversarial role rather than cooperative role that we have with a number of the FmHA programs as opposed to the SBA programs. I am talking about the loan servicing. Banks in FmHA, and like I say, we do not have first hand experience in this because we have purposely shied away from guarantees in the past, but I do not think that we can any longer do so. Bankers that I have talked to have to fight tooth and nail to collect on the guarantees.

In fact, I have heard it said that the only way to collect on an FmHA guarantee is to go to court and fight FmHA so instead of trying to collect from the borrower as much as possibly can be collected, they spend their time in court fighting each other. And that has to be changed. One of the areas that they tried to discount the banks in is the area of loan servicing. And for minute and inconsequential loan servicing differences, things that the bank may not agree with with FmHA, or if the farmer sells some grain in the son's name or something that the bank has no control over, which happens when farmers are in dire straits, then, the FmHA wants to blame the bank and not hold responsible on their guarantees.

Senator CONRAD. So what we are talking here about is an attitude, lack of a cooperative attitude?

Mr. BERGSTROM. That is correct.

Senator CONRAD. I guess we saw that here this morning.

Mr. BERGSTROM. Right. I do not see any reason why that cannot be established similar to the program that we work with the SBA.

Senator CONRAD. In other words, you have had a good experience with SBA? You get a cooperative attitude there that is lacking with FmHA?

Mr. BERGSTROM. That is right. And part of it may be due to the previously unattractive package that FmHA guaranteed loans present so they were not widely used, and we have not built up that rapport.

Senator CONRAD. OK.

Mr. BERGSTROM. The third, and probably my most pet issue, is that of the family size farm definition regarding loan guarantees. We arse supposed to help out, do what we can to keep some of these farmers on that land. The eligibility for a guaranteed loan in half of our applications were thrown out because of the family size farm. And I could sit here and I could show you that the man and the wife farm the land, and maybe they use a little help in the spring and a little help in the fall to get that crop in and off.

It is a family size farm. They work a little harder, a little longer, but they——

Senator CONRAD. What size is the farm that we are talking about here?

Mr. BERGSTROM. In my particular area, and I have letters to all the congressional people dated March 1985, and I have responses from all of them. So I have been harping on this since 1985, and I have responses back from the Department of Agriculture in writing that says acres cannot be a determinant in family farm, and yet on the application the only thing that is asked is how many acres do they farm besides the financial information.

Senator CONRAD. And then they reject it on the basis of not being a family farm.

Mr. BERGSTROM. And then they reject it. We have been through adverse hearings. You might as well stay home because you cannot win. So we have been through all of that, and I have just almost given up on that part until I got a chance to put my plugs in here.

I suggest that FmHA loans under the guaranteed program should have different limits set than the direct loans. Most of these borrowers that we are talking about have a little more equity than the direct loan customers that we are talking about and the requirements would not have to be that tremendous so that we are handling huge operations. We could limit real estate loans to so much, equipment loans to so much, and operating loans to so much. And have an aggregate total that a combination of those loans could not exceed.

Or if it was felt necessary, you could also put some things in regarding gross income requirements. And I do not think it would open the door to extremely large farm situations.

The fourth thing that I agree something has to be done, and it is hard to determine exactly how to do it, is those dealing with restructuring the debt that is currently there. The recognition of the undersecured position of a lender is hard to accept some times, and what to do about it. I do not think that Farmers Home's reluctance to want to forgive debt and so forth is anything new. Historically lenders—you know, you hate to have a tradition of allowing that—what happens when you make an unsecured loan? It is thought that is going to be paid back on the integrity of the person and so forth.

But the realities of the situation have to come to the forefront that indeed we have some undercollateralized situations. We have situations that will not cash-flow, and if we do not do something about it, they will all end up in chapter 12 which is——

Senator CONRAD. Total loss.

Mr. BERGSTROM [continuing]. Mandatory mediation or everybody loses, and you go through the foreclosure and you go through all the expense on both sides of chapter 12 and so forth. We have found that we have so many people that cannot qualify for guaranteed loans because of size limitations or this reason or that reason, and we have even instituted our own loan buydown program within our own bank. We even asked, well, what if we——

Senator CONRAD. Let me ask you this. You have instituted your own loan buydown program?

Mr. BERGSTROM. That is correct.

Senator CONRAD. Is your record as poor as FmHA? They have used 6 percent of the funds available in their program.

Mr. BERGSTROM. We have not been allocating specific number of dollars to that program. We have been using it where it needs to be used. There is a number of criteria and basically what I find about debt writedown and so forth, and Mr. Clark referred to the problem. If you write it down and you have an ongoing operation, that is terrible. I agree in some respects that if you write it down, many times you expect to liquidate and get done with that credit and be done with the headaches.

In reality, it is hard to use that way, unless you want to lose just a whole lot of money. I guess that is basically what we are here for is that in many cases you can lose less by restructuring, by doing some of these things and we have had to do that. We have tried to make determinations as to whether that operator is a good operator. Does he have good production? Does he have a trusting relationship yet with the entity, whether it is the bank or whether it is Farmers Home Administration? I think those two points are——

Senator CONRAD. Fundamental.

Mr. BERGSTROM. That is fundamental. If you have those things, then you maybe can go on, and also maybe what is the person's attitude. Does he think he can make it if he gets a chance.

Senator CONRAD. We are going to have to go on to Lonnie. Let me just indicate to you. I was a creditor. Many times as the State tax commissioner, as you know, Gary, tax commissioners are put in the place of being creditors just as bankers are, just as Mr. Clark is. It does not take any great length of experience to find out very quickly that in many cases you are simply better off to restructure than to go through the cost of foreclosure and liquidation, and from what I hear that is what you are saying.

Mr. BERGSTROM. I might make one more point, and that is in many cases we are trying to restructure as a bank a credit, and we get basically the various segments of the creditors to go along with the plan. We get the borrower. Many times we are sitting there with the borrower's attorney, putting together these plans, trying to work something, and somebody, for example, Farmers Home will not go along with the program. So what do you have—all your work has been for nothing.

If they do not have the authority to be able to work into that plan, it is all for naught. There was one interesting note that I just found out the other day, and that has to do with deferrals. We talked a little bit about deferrals, and we have requested a number of deferrals or some of our borrowers have from FmHA, and some of them were granted.

Recently they must have had some policy changes regarding those on how you project your income and expense for justification for using those deferrals. Before I think you could use 3 percent a year or something, more increase in income over the 5-year period, and the same level of expense basically. Now I understand from what our county supervisor told me is that now they have to use less income and a little more expense over the same period. So that any that he has seen so far, none of them would qualify under the current interpretation.

Senator CONRAD. Thank you very much for that.

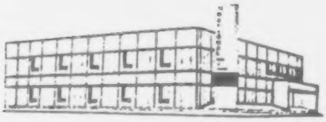
[The prepared statement of Mr. Bergstrom follows:]

The NATIONAL Bank of Harvey

HARVEY, NORTH DAKOTA 58341

Phone (701) 324-4611

GARY BERGSTROM
Vice President & Cashier



Honorable Members of the Senate Agriculture Committee:

It is indeed an honor for this banker from Harvey, North Dakota to be able to share some of the thoughts from my prospective relative to functional improvements that may be feasible to make the FMHA programs more workable in the present agricultural environment. With the changes and shifts in agriculture policy in recent years in order to make our products more competative in world markets, it is only sensible that programs to meet the financial needs of those involved in agriculture must be changed, adapted, or made flexible enough to address the fallout from these policy changes.

I personally believe that in most cases, the responsibility for some of the financial problems that we in agriculture are going through must be shouldered by everyone involved. I feel that that the farmer himself, in most cases, was at least 1/4 to 1/3 responsible for the problems. The financial agencies (Banks, PCA's, FLB's, and FMHA's) must also share 1/4 to 1/3 of the responsibility. The other 1/3 to 1/2 of the problems can be laid at the feet of the severe shifts in agricultural policy. While I may agree with the basic reasons necessary for many of these policy changes, we must equip the financial agencies with the tools to deal with the problems arising from these shifts.

I am president of the National Bank of Harvey which is located in a town of 2600 population. Harvey serves as a trade center for the agriculture community for about 40 miles in each direction. Our Bank is about $23,500,000 in total assets and has been heavily committed to serving farmers and our small town businesses which are almost totally dependent upon agriculture. In April of 1986, I completed a 4 year term as mayor of Harvey and served 6 years previous on the city council. From the prospective of both a Banker and a previous city official, I cannot stress enough the necessity to find a way to provide an efficient source of funds for agriculture or the consequences to rural communities will be devestating.

I happen to believe that we already have the instiutions and programs in place that can deliver funds to agriculture on an efficient basis. These institutions are the local banks and the FMHA, and the program is the FMHA guaranteed loan program. By making a few modifications to this guarantee program, I feel that we can consistently deliver funds from investors in all parts of the country to agriculture in the most efficient manner possible.

Our Bank has utilized the SBA guaranteed loan program to finance the majority of our local businesses over the past ten years with great success. We have made approximately 30 to 40 loans under this program, and have had only one fail to date despite the secondary reprocussions of the agriculture economy that are definately showing up in the business sectors of our main streets. I credit the lower rate of business closures in our town to the extensive use of the SBA program. By use of the program, the bank is able to spread its risk through the guarantee and pass through to the customer a variety of terms and rates that would not be possible without the guarantee program.

I feel that some functional changes in the FMHA guarantee program are necessary in order to have a program that works in practice and not just theory. Some of those changes are as follows:

1. The procedure for payout of the guarantee needs to be made upon default of the loan as in the SBA program, not after liquidation of the borrower. This change will in efect create confidence in the guaranteed paper by investors and financial agencies that they will receive funds under default in a timely manner. This will result in more agressive bidding for this paper and will result in lower rates to the borrower.

2. The second change that I see necessary to effectuate an effective guarantee program, is to eliminate the seemingly adversarial role between FMHA and the lending institution as it pertains to loan servicing. This is a partnership effort and cooperation is necessary between FMHA and the financial institution. Horror stories abound from banks that the only way you can collect on an FMHA guarantee is to take legal action. Furthermore, the stories indicate that often times FMHA attempts to avoid payment on a guarantee for minute and inconsequential variances from the servicing agreement. Loan servicing standards should be set and unless there is substantial negligence in the servicing, the financial institution and FMHA should work together to recover as much as possible from a defaulted loan situation rather than fighting each other.

3. The issue of family size farms for eligibility must be expanded under the guaranteed program. I believe that the direct FMHA programs can still fulfill the "lender of last resort" role for borrowers that cannot obtain financing through the guarantee program due to extremely low equity if it is deemed to be in the best public interest to do so. I personally feel that new entrants into the field of agriculture should be required to have at least some specified minimium equity position as experience [illegible] shown us that there is risk enough of business failure even at normal equity levels.

I would suggest that the FMHA guaranteed program have completely separate requirements for determining who is eligible. There could be limits set for the types of loans involved such as real estate $400,000, equipment $300,000, operating $200,000, with a total aggregate to one borrower of $500,000. There could also be a requirement for gross income to be less than a set amount per year (Example $500,000). By setting the requirements in a manner such as this, we can help present and future borrowers who may be a few acres larger than what is allowed under the direct programs without opening the doors to extremely large operations.

4. Some provisions are also going to have to be made for dealing with the FMHA debt that exists in many cases which is far beyond the current collateral valuations. Basically there are relatively few choices that can be made as these loans are difficult to cash flow even at current market values and are nearly impossible to service at levels exceeding market value without some type of restructure. The options are either liquidation which will in many cases force a chapter 11 or 12 bankrupcy, or some type of restructure of the debt. I feel that the guarantee program could be utilized in some cases in such a way as to enable FMHA to recover more than it would in a liquidation (bankrupcy) and turn a long term non-performing loan into a restructured performing loan.

For the past few years, banks have been forced to either liquidate or restructure loans that do not cash flow at current market value, and our bank is no exception. If the borrower is a good producer and has a mutual trusting relationship with the bank, and is willing to also make some personal sacrifices to make a restructure work, there is little doubt that both parties come out ahead in a restructure Vs. a bankrupcy.

I feel that if a troubled borrower presents FMHA with a restructure proposal that may or may not require a writedown to present market value, FMHA must be required to analize their liquidation position and be authorized and encouraged to enter into a restructured agreement either on a continued direct basis or under the guarantee program. A writedown of a present FMHA loan to current collateral values should not necessarily eliminate restructuring the loan through a guarantee or other methods, as the objective should be to ultimately recover more than through a bankrupcy or liquidation.

At present, the authorization appears to be in place for FMHA to write down under collateralized loans and extinguish the resulting debt, however the process seems to be arbitrarily lengthy in most cases. A reasonable time table should be encouraged to accomplish this process in a timely manner.

One county committee in our area recently voted to deny a writedown of an admittedly undersecured position with no possibility of being able to cash flow the debt without the adjustment which may force the borrowers to bankrupcy. Rather than look at how the most can be recovered, the committee members said they prefer liquidation so their names don't have to be linked to the writedown of the debt. The decision is being appealed to a higher level at the present time.

I appreciate the opportunity to share with you some of my thoughts on how we can better meet the needs of agriculture and deal with the existing problems currently being experienced.

Sincerely,

Gary Bergstrom
Gary Bergstrom
President

NATIONAL BANK BUYDOWN PROGRAM

1. BASE RATE WILL BE VARIABLE RATE II.

2. QUALIFIED BORROWERS CAN OBTAIN:

   A. 1 1/2% interest buydown from base for 3 years if annual requirements met.

   B. 1 1/2% deferred interest accrual. Interest to be deferred 3 years. At the end of the fourth year, the first installment of deffered interest will be due. Fifth year 2nd installment, sixth year 3rd installment. In the fourth fifth and sixth year, interest will be applied first to operating, secondly to accruing interest, thirdly to deffered interest installments, and then to principal reductions. There will be no interest applied to the deferred installments.

   C. There will be a floor of 8 3/4% so if the Base falls below 11.75% the buydown interest will be less than 1 1/2%. If rates fall below[illegible].25% then deferred interest could be less than 1.5%.

3. THE PROGRAM IS DESIGNED FOR 3 YEARS, BUT ALL REQUIREMENTS MUST BE SATISFIED EACH YEAR BEFORE PROGRESSING TO THE NEXT YEAR.

4. THE PRIMARY GOAL OF THE PROGRAM IS TO PROMOTE A MAXIMIUM JOINT EFFORT BETWEEN THE BORROWER AND THE BANK TO REDUCE THE DEBT LOAD OF HIGHLY LEVERAGED BORROWERS THAT CANNOT QUALIFY FOR VARIOUS OTHER PROGRAMS.

PROGRAM REQUIREMENTS.

1. NET WORTH LESS THAN $250,000.

2. EQUITY POSITION OF LESS THAN 60%.

3. CANNOT MELT THE REQUIREMENTS OF A GUARANTEED LOAN AND FEDERAL BUYDOWN.

4. MUST HAVE A TRACK RECORD OF:
   A. GOOD PRODUCTION HISTORY
   B. FARM WORK DONE ON A TIMELY BASIS.
   C. TRUSTING RELATIONSHIP WITH THE BANK

5. CASH FLOW WILL NOT WORK SATISFACTORILY WITHOUT THE INTEREST BUYDOWN.

6. BORROWERS CASH FLOW WILL WORK WITH THE BUYDOWN AND OTHER ADJUSTMENTS.

7. BORROWER MUST PROVIDE SATISFACTORY EVIDENCE THAT:
   A. LIVING EXPENSES HAVE BEEN TRIMMED TO MINIMAL LEVELS.
   B. RENTAL AGREEMENTS HAVE BEEN NEGOTIATED IN LIGHT OF CURRENT PRICES. AND PRODUCTIVITY OF THE LAND.

8. NO CROP PROCEEDS WILL BE RELEASED EXCEPT IN ACCORDANCE WITH A CROP PROCEEDS APPLICATION/DISBURSEMENT SCHEDULE WHICH HAS BEEN APPROVED.

9. NO BUSINESS OR PERSONAL CAPITAL EXPENDITURES OR LEASES OVER $1000 WITHOUT WRITTEN AUTHORIZATION FROM THE BANK.

10. OPERATING FUNDS WILL BE APPLIED FOR THROUGH THE BND BUYDOWN PROGRAM.

11. SALE OF NON-ESSENTIAL/NON-EARNING ASSETS REQUIRED.

12. ALL SECURITY REQUIREMENTS MUST BE PERFECTED INCLUDING TITLES ECT.

13. AN ANNUAL COLLATERAL INSPECTION WILL BE NECESSARY (EQUIP, LIVESTOCK, GRAIN).

14. BORROWER MUST CARRY FEDERAL CROP/HAIL INSURANCE AT LEVELS SATISFACTORY TO THE BANK.

15. PROJECTED BANK REDUCTIONS MUST BE MADE OR REDUCTIONS IN PERSONAL DRAWS WILL BE NECESSARY TO MAKE UP THE DIFFERENCE IN THE FOLLOWING YEAR. EXCESS REDUCTIONS WILL BUILD A RESERVE IN THE EVENT OF A FUTURE SHORTAGE.

Senator CONRAD. Lonnie Parsons. Lonnie is from Western State Bank in Devils Lake, North Dakota. Proceed with your testimony. Again, all of your prepared statement will be entered into the record. If you can summarize in 7 minutes, then we will have some time for questions.

STATEMENT OF LONNIE D. PARSONS, WESTERN STATE BANK, DEVILS LAKE, ND

Mr. PARSONS. Well, the first thing I would like to say is that I have a better understanding of where my county supervisor is coming from after hearing Mr. Clark.

I work for a community bank in a small town in north central North Dakota. I have about 175 active farm families whose combined credit needs will exceed $11 million. My role as an agricultural loan officer is to service the needs of these farm families. I must stay within the guidelines of safe, sound, prudent banking practices while serving those needs. However, with the well publicized problems in the rural economy, my role is increasingly more difficult. A bank's role in the community should be one of leadership. We have the responsibility of keeping as many of our friends and neighbors in business and on the farms. In other words, we want to keep the yard lights burning.

I am a former Farmers Home Administration employee. During my tenure with FmHA, I worked on the Fort Berthold Indian Reservation. To paraphrase a popular television show, "Our mission was to boldly go where no commercial creditor had gone before." This outreach of credit allowed the people within our area the opportunity to go into and succeed in business. With the rural economy in dire need, many creditors including FmHA are turning their back.

History has shown that you cannot borrow your way out of debt. Farmers as well as bankers are not looking for handouts. Rather, we need a solid source of capital, at a reasonable interest rate, to help our farmers stay in business. We must make every effort to help those farmers who can demonstrate economic viability the opportunity to get into or stay in business. Rural America can be rebuilt.

Agriculture is the engine that pulls the rural economy train. This engine runs on a fuel called capital. Unfortunately, our sources of fuel are limited. As a commercial banker and an approved FmHA lender, I ask that you give us access to that capital substitute called credit. The guarantee program is an important tool we can use to help those farm families in need stay on the family farm. It serves no purpose for me to try and stick FmHA with poorly performing loans. I do not have the people resources to spend on farming operations that cannot succeed. I must put my funds and staff to work where they will do the most good. I can achieve this goal with the help of the FmHA guarantee program.

FmHA requires that I follow a strict format in processing loans for their review and approval under the guarantee program. The complexity of these requirements discourage banks to not participate in this important source of credit. In fact, the sheer complexity of the FmHA procedure has created a new industry for former

FmHA employees. These consultants process loans on a fee or contractual basis. The fees charged to the farm families can run into the hundreds and even thousands of dollars. This may be a small price to pay if it keeps the family in business. However, it is usually borrowed money that must be paid back with aftertax dollars. I feel there should be a simpler and less costly solution for delivering this program. The banks and farm families need access to this important source of credit.

The key to using the guarantee program successfully rests solely in the hands of the FmHA county supervisor. This one individual can make the program succeed or fail. I deal with five different FmHA county supervisors. As strange as it may seem, loan dockets processed in one county successfully will be turned down in another. A good county supervisor will work hand in hand to deliver the program where it is so urgently needed. In my State, North Dakota, I must commend the State FmHA staff in their efforts to educate, train and encourage people such as myself in working with the guarantee program. I wish that their enthusiasm would carry over to the county offices.

I have had loan applications denied for a variety of reasons. None of which have any bearing on the farm family and their operation. In situations like this, the farm family becomes a pawn in the struggle of the bank to make the guaranteed loan and FmHA to deny their application.

One of my biggest disappointments as a farm lender happened this past winter. I was working with a young farm family on helping them purchase 160 acres of farmland. Their only creditors were my bank and FmHA. They had a solid track record of meeting their obligations. We started processing their loan after harvest last fall. After 60 man-hours of my staff's time and several months, we still were not able to get their loan in front of the county committee. By this time, they were frustrated as was I. In February, I decided that we were going to give their loan one last maximum effort to achieve a guarantee. We finally succeeded in having their loan viewed with favor by the county committee. The county supervisor gave us the preliminary commitment. At the same time we were told that funds were exhausted. It was then suggested that we and the farm family reapply this fall when a new allocation of funds were expected.

The spirit of the guarantee program is to provide funds from commercial sources to help farm families who otherwise would be denied credit. It is also a way of helping FmHA transfer their workload to commercial lenders. The problem with the program, I feel, is communication. Many banks simply are not interested in the program for a variety of reasons. I feel this is unfortunate because the farm families must start with a willing commercial creditor. However, in order for the program to succeed, there must be a pulling together of the FmHA and us bankers. Each one plays an important role in the overall process. With the combined effort by FmHA and commercial banks, we can put the coal back in the rural train.

In conclusion, the opportunities are there for young people to get into agriculture. At the present time, there is lots of land available for purchase. We all know the sad cry of the auctioneer for one farm family is also the cry of opportunity for another. Let us not hold rural America back by not having the funds and courage to meet their needs. Help us bankers along with FmHA to put America back in the farming business.

I also would like to add that I wish Mr. Clark were here. My State is fortunate. We are blessed with a program that allows us as bankers to deliver 65 percent of a farmer's annual operating loan to them for specific purposes at 3 percent interest.

My bank takes the responsibility of doing all the processing. We sacrifice the earnings on that portion that is participated out. The program is administered through the Bank of North Dakota. To date my bank has done 50 of those loans. That is more than any bank in the entire State of North Dakota. We did the extra effort to help the farmers, and it really hurts to hear people here think that we are not out there trying to help these guys because we sincerely are. We have to deal with them on a day-to-day basis and experience the hardships that those families feel in trying to deal with the Federal bureaucracy.

Like I said, I have loans turned down for ridiculous reasons in my estimation. We have them turned down because of our failure as bankers to adequately assess the impacts of Environmental Clear Air Act. We have had them turned down because we cannot conclusively prove if the site that the farmer is purchasing is an archeological or historical site, or has the significance thereof.

It is one stall tactic after another——

Senator CONRAD. That is utterly preposterous.

Mr. PARSONS. It certainly is.

Senator CONRAD. Utterly, utterly preposterous. I guess I understand more—I must say in some ways this hearing has been enlightening. In other ways, it has been one of the most disappointing experiences I have had since I have come to Washington because the more I think about the attitude evidenced by Mr. Clark, the more I realize why we are in such deep trouble. There was absolutely no attitude there of cooperation or serious intent to try to make this system work better. I must say the more I think about his performance here this morning, the more I begin to question whether we do not have a very fundamental problem of leadership at FmHA.

Dr. GLENN. Are we allowed to say amen to the Chair's statement?

Senator CONRAD. You are always allowed to say that. I mean that sincerely. The more I think of the attitude that he displayed here this morning, the more I think that maybe a very significant part of our problem stems directly from the leadership of the Agency.

Mr. PARSONS. I agree with you, sir. I have not experienced them until today at this level. I have been dealing more with the guys that are out there in the field. I would like to say also in response to Mr. Clark's statement about the interest buy-down program. It is near impossible as a commercial creditor to successfully put one of those loan dockets together. We are asked to conclusively prove over the next 7 years that that farm family will stay in business. We are also asked to do that in light of the impact the Federal Government has on farm subsidies, and of course, we are part way through a 5-year program, and the 5 years, I think, runs out before the 7 years are up. We are also asked that we have to, as commercial bankers, write-down the debt to make this program work. The items that are in your bill, Senator Conrad, are exactly what FmHA is asking us to do as commercial bankers.

Now, as Gary has said, and I agree with him, none of us like to lose money. The money that we lose has to be made up in profits from other sources and sometimes that translates into higher operating costs and also greater interest rates to our farmers who are paying. And that is a very real economic problem that we deal with.

However, the American Bankers Association has put out a good book on negotiating farm loan workouts and the key thing in the statement is "negotiating." We have to play the game to win, but sometimes in negotiating you are not always going to win everything you want.

Senator CONRAD. That is precisely the experience of everyone of us who has been a creditor. I have been a creditor, and I know exactly what it is. If you do not negotiate, instead it is your attitude that is wrong. The sense I got from Mr. Clark here this morning is that it is wrong to work out a loan, to restructure, to have debt forgiveness as part of the structure of some settlement. And with that attitude, how can you enter into a negotiation? You have already closed the door to being able to meaningfully negotiate. The cost to the Government from that attitude is simply going to be staggering.

I would like to ask the two bankers, before we proceed, if you have found cases where you are better off to forgive some of the debt, that is your earnings, your bottom line is that you are better off to restructure than to go to the wall? Has that been your experience?

Mr. BERGSTROM. It has definitely been that experience, and basically any negotiation, and most of these borrowers, either through the Farm Credit counseling services or their bankruptcy attorneys or whatever have adequate counsel to help lay that out for them.

What we come up with if we come to a negotiation, which in more cases than going to bankruptcy and so forth, the customer comes up with some of the objectives that he has in mind in the restructure and also the bank recovers more than what they would in going through the bankruptcy and alternative routes. It is as simple as that.

Senator CONRAD. Yes. I think we recognize that. I will go to you next, Mr. Parsons. Let me just say that I understand there are times when you need to go through foreclosure. There are times when, unfortunately, that is the only option left. But goodness knows, there are many times when you are better off to go another route. Would you answer the same?

Mr. PARSONS. Well, I think the key thing is that we also keep a good relationship with the customer. That individual farm family is still in business out there. We are taking some short-term losses. The fault of the loss is not always the farmer's fault, nor is it the bank's fault. It is just the situation of the times. But by taking a loss on the short term, we stand to gain in the long term. We keep the people on the farm. We cannot afford to put new farmers out there with the economy the way it is. It is very difficult.

But by working with the individual, we may not get every dollar that is owed us back, but we certainly are going to get a farm family that is out there that is very sincere in trying to pay us back, and in some cases they do pay back the dollars that you do writeoff.

Senator CONRAD. There are other factors that have to be entered in here. What is the attitude of the people? What has their past track record been? How cooperative have they been? But this notion that it is somehow just wrong to have debt forgiveness as part of a structure is just a roadblock.

We are going to have to proceed with Mr. Cecil Huff, a dairy farmer and cochair of the Credit Committee of the National Save the Family Farm Coalition. If you would proceed with your statement, Mr. Huff.

STATEMENT OF CECIL HUFF, DAIRY FARMER, COCHAIR OF THE CREDIT COMMITTEE OF THE NATIONAL SAVE THE FAMILY FARM COALITION, AVA, MO

Mr. HUFF. Thank you, Mr. Chairman.

I might say that the Save the Family Farm Coalition has 38 grassroot farm and rural organizations in 28 States at this time. You do have a good bill that you have introduced, but the coalition would like to strongly urge you and the members of the committee to look at a comprehensive package that would provide debt relief and borrower's rights to all lenders, not only the Farm Credit System and FmHA but other commercial lending institutions as well as owner financed property.

In the Food Security Act of 1985, it was clear that Congress wanted more than what this Administration has been able to provide in the implementation of that language. After hearing Vance Clark's testimony here today, they not only failed but they did it with malice and aforethought.

Among other things that we have seen in the 1985 farm bill that needs to be strengthened is the requirement to restructure debt instead of foreclose, provide greater access to loan servicing options, and to provide for redemption of homestead after foreclosure and strengthen the appeals process.

I have also been a past county supervisor within the Farmers Home Administration before returning to my family farm, and I can tell you the appeals process is very lacking. It is similar to the fox and the chicken house. Congress also tried to further democratize the FmHA by having two out of three county committee members elected. We think that this should be opened up to FmHA borrowers and the process should be lengthened out so it can get true representation from the county, as far as nominees to run.

It is evident that the Farmers Home Administration is not committed in the same way Congress is to maintaining and rebuilding an efficient family farm agriculture. It is evidenced by the testimony today, the language in your bill, and any bill dealing with FmHA farms will have to tighten up discretionary authority in light of the attitude of the Administration in power.

I would not be above or beyond calling for civil and criminal penalties to go along with that, too. On the item of debt restructuring, the credit committee of the coalition has done a lot of work, and even though you have good language on this credit, we found out in our work on debt restructuring that we have done on the Harkin-Gephardt bill that it is very important that you define cost of foreclosure. What we found out is lenders, particularly in the Farm Credit System, are dealing with two figures. They have the current market value figure, and they have the recovery costs, recovery value to that. And that recovery value can be 50 percent less than the current market value, and you say how could that be? It would be simple. You figure the cost of maintaining a nonperforming asset, that is, interest, so much land inventory, you are going to have to maintain it probably 2 years by the estimates I have seen in the Wall Street Journal. That is 10 percent interest rate, 2 years, 20 percent loss right there.

Senator CONRAD. In Mr. Clark's testimony this morning, I do not know if you noticed, he talked about $7.8 billion in nonperforming loans. At 7 percent interest we are talking about losing $500 million a year right there, not counting your built-in loss—that part of the loan which will never be repaid because 75 percent of those loans are delinquent by more than 3 years.

Mr. HUFF. Exactly.

Senator CONRAD. So, FmHA has already lost, aside from the face value, which is estimated by USDA to be $2.6 billion, $500 million a year in interest per year in the interim 3 years. That is $1.5 billion. We are up to $4 billion right there.

Mr. HUFF. That he is trying to say that your bill would result in the ultimate loss, when actually those accumulations are the result of bad management on Vance Clark's part. If those debts had been restructured at the proper time, those losses would not have accumulated.

I could not resist that temptation after he gouged the farmers saying we were bad managers. Another cost that should be reflected in the cost of foreclosure is not only the cost of maintaining a nonperforming asset, but what will that asset do over the next 3 to 5 years, or even 2 years.

Senator CONRAD. Have you seen the provisions that are in Senator Boren's bill?

Mr. HUFF. Oh, yes, and I am very well pleased with them.

Senator CONRAD. We are thinking about, based on our own staff analysis and based on the comments you are making here today, adopting those same provisions. It would seem to make sense to graft those provisions into this approach so that we had a more clear definition. I think you are right.

Mr. HUFF. It actually represents the reality of what the lenders are facing out there in the real world. It is bad business to foreclose this property because you cannot turn it over. You cannot turn it into cash. I do not think we have bottomed out on the farm crisis. I do not think land prices can increase nationwide, not when we are looking at 7 million acres in inventory property and more coming in, and very little going out.

Senator Conrad. Well, the Economic Research Service, their own Agency, said we are going to lose another 10 percent of land value this year.

Mr. Huff. Yes. Iowa was 17 percent last year. So I am very well pleased if you would include the cost of foreclosure language that is in S. 57. I think it is fine language.

Another issue is the inventory property issue. If it had not been for Jim Massey and others, that would already be doubling daily more than what it is, or increasing daily more than what it is. I know the coalition's position is that we need to look at this land inventory as a national resource, a way that we can rebuild the family farm structure and as Gene Severens pointed out, that is definitely not the intent of the Farmers Home Administration people right now.

They have a very interesting study, in which he divulged in part of his testimony today, that virtually proves that those properties are not going back to the family farmers. They are going to ineligible persons, which by FmHA definitions are not family farmers.

One way to correct part of that would be to automatically classify all land in FmHA inventory as suitable property, and the burden of proof would be upon the Secretary of the Department of Agriculture to prove that it is surplus property, thus allowing it to be sold to ineligible borrowers.

The coalition feels the first right of refusal language must be expanded. In using the criteria that had been spoken here today, previous owner gets first right, and then a member of the family, and then third priority should be given to a new farmer or new beginning family farmer, or local farmer in the area, and within those priorities, the coalition feels very strongly about providing for the minority farmers, black farmers, who have suffered the farm crisis 10 times worse than what the white farmers have suffered.

A third issue which the coalition is committed to working on is that after farmers that are forced into chapter 12 bankruptcy because their lenders would not negotiate with them, and they do get an approved chapter 12 bankruptcy plan, oftentimes they are unable to secure the necessary credit to continue under that approved chapter 12 bankruptcy plan. We would like specific instructions to the Farmers Home Administration to provide credit for approved chapter 12 bankruptcy plans.

A fourth issue involves the FmHA's ability to attach Government payments in their debt collection efforts. In essence, what this will do is starve out an FmHA borrower. If they go in and attach Government payments, and those Government payments are to be made, were made for the purpose of reimbursing that farmer for his true cost of production, and that cost of production is represented in the form of his production expenses, operating expenses and family living expense. And they should not be allowed to attach those until they have liquidated their security agreement because it will, in effect, starve the family out.

In conclusion, I would like to say that the issues being discussed here today are very fundamental: whether Congress is going to be committed to building the family farm structure or work toward its demise, much as the Administration seems to be. I am very well pleased with what I have heard here today as far as the Senators and their questioning and their understanding of the problem, and willingness to deal with it. The one thought I would like to leave with you is this quote from agriculture expert Franz Schurmann that "history issues a stern warning. Countries that have abandoned their farmers have suffered disasters. Soviet agriculture still has not recovered from the 1930's decimation of an entire class of productive peasants. * * * The argument for some new farm policy is simple but elusive: somehow any country's well-being and security are bound up with a viable population of farmers. As much as the rest of the world is learning this lesson of history, we are rapidly forgetting it."

It is ironic to me that the Reagan administration uses such high level of rhetoric against communism, where in my opinion, when I scrape away all the technical issues here and look at this it is really a land control issue, who is going to control the land. And when we look at countries in the Soviet Union and in Central America where the seeds of communism were sown long ago, and it resulted in a loss of the land by many into the hands of a few. Those are the seeds of communism that I fear are being sowed by the administration while on one hand they condemn it; on the other hand, their policies are sowing the seeds of it, in my opinion.

Senator CONRAD. Thank you very much for your testimony.

[The prepared statement of Mr. Huff follows:]

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TESTIMONY OF CECIL HUFF,

DAIRY FARMER, AVA MISSOURI

CO-CHAIR OF CREDIT COMMITTEE OF THE

NATIONAL SAVE THE FAMILY FARM COALITION

BEFORE THE COMMITTEE ON AGRICULTURE, U.S. SENATE

JUNE 9, 1987

Mr. Chairman, members of the Committee, my name is Cecil Huff and I am a dairy farmer and a FmHA borrower from Missouri. I am co-chair of the Credit Committee of the National Save the Family Farm Coalition. I speak for thirty eight grassroots farm and rural organizations from twenty eight states. I want to thank the Committee for this opportunity to speak to you on reform of the Farmer's Home Administration.

I want to commend you for your interest in resolving the continuing problems with FmHA. However, I must start out by stating that the Coalition strongly urges the members of this Committee to pass nothing less than a comprehensive package that provides the needed debt relief and rights to borrower's of all lenders--FmHA, FCS and commercial banks.

In the 1985 farm bill, Congress made its position clear by passing a strong reform package that provided FmHA officials with broad authority to use all means available to work with its borrowers facing financial difficulties due to the past five years of a severe farm economic crisis. As you have undoubtedly been hearing from your constituents and from the witnesses today, the Farmers Home Administriation has failed miserably in its implementation of the policies passed in 1985.

Among other things, the statutory changes you passed in 1985 allow FmHA to resturcture debt instead of foreclose, provide greater access to loan servicing options, provide for redemption of homestead after foreclosure, and strengthen the appeals system. Congress also tried to further democratize FmHA by having 2 of 3 county committee members elected and moved to assure that FmHA's large and growing land inventory be returned to the previous owner and other family farmers.

In these policy areas and others, it is clear that FmHA has ignored or aggresively circumvented your intentions laid out in the 1985 law. FmHA's disregard of Congress' wishes has meant unnecessary hardship for thousands of farm families. This is a serious problem that must be addressed quickly. Now, more than ever before, we need an FmHA that is truly working to help its borrowers keep their farms during the continuing economic crisis. We desperately need an agency that is committed, in the same way Congress is, to maintaining and rebuilding an efficient family farm agriculture.

That is why the groups of the National Save the Family Farm Coalition strongly support the legislative proposal, S. 1179, brought together by Senator Conrad. This legislation is a golden opportunity for Congress to aggresively counter the attempts by FmHA officials to get around its responsibility to maintain and build a family farm system of agriculture. This bill builds on what was passed in 1985. It tightens the language so that FmHA officials have no choice but to fully comply with the wishes of Congress.

I will not take your time reviewing this very good piece of legislation. Instead, I would like to talk about additional areas that need to be addressed as you move to reform FmHA.

The first is debt restructuring. The stronger language on debt settlement in S. 1179 is sorely needed. In 1985, Congress gave FmHA the authority to restructure debts to avoid foreclosure. The proposed bill would mandate that they use their authority whenever restructuring is less or equal to the cost of foreclosure.

An important point that is missed in this bill, though, is a clear definition of the cost of foreclosure to reflect the true recovery cost to the lender. Cost of foreclosure should include legal and administrative costs of foreclosing, costs of maintaining collateral as a nonperforming asset, adverse impact of the sale of acquired property on other borrowers and the estimate of the change in value of the collateral while it is held by FmHA.

The second issue that needs to be addressed is the proper disposition of FmHA's land inventory. FmHA has 1.6 million acres, or 5,000 farms, worth just under a billion dollars in inventory. With FmHA trying to resume their adverse action against delinquent borrowers, this number could easily double. The fact that FmHA is holding so much land is testimony to the great loss of our family farmers in these past few years. However, this land should also be viewed as a national resource providing a unique opportunity for rebuilding an efficient family farm agriculture, and halting centralization of land ownership.

In the 1985 FmHA reforms, Congress recognized the importance of making sure this land in inventory was returned to the hands of previous owners and other family farmers. The reforms included a farm leaseback and option to purchase program and placed restrictions on the sale of inventory property by the Secretary.

After two years of a self-imposed moratorium to keep from adversely affecting land values, FmHA is now beginning to sell-off its farmland holdings. It is alarming, but also not too suprising, to discover that once again, FmHA is clearly disregarding Congressional intent by selling much of its land to persons who are ineligible for FmHA financing.

In a study done by the Center for Rural Affairs, it was found that "71% of current farmland sales have gone to buyers who are ineligible for FmHA loans and therefore outside the scope of the agency's mission."

According to the Center for Rural Affairs, FmHA gets around the law by classifying most of their land holdings as surplus, which allows them to sell the land to ineligible buyers. It is clear FmHA does not share Congress' committment to assuring that our farmland stay in the hands of family farmers. You must take further action to give FmHA no choice but to sell their farmable land to family farmers.

To do this you must take away FmHA's discretion in classifying land as surplus. All land should automatically be considered suitable unless the Secretary can prove that an eligible person would not be able to conduct a farming operation on it. Also, the law states that FmHA must offer suitable land for sale for three years before classifying it as surplus. In some cases FmHA began counting from the time the land was acquired, even though a moratorium on sales has kept FmHA land off the market for two years. The three year time period must start when the land becomes available for purchase.

The first right of refusal language must also be expanded. After the previous owner is offered the chance to lease and buy back his farm, the same right should then be given to a member of the previous owner's family, the third priority should be given to a new farmer, and the fourth to a local family farmer.

Black farmers have been the most severely hit of all types of farmers in the farm crisis. It is important then that minority farmers should be given an equal chance to purchase FmHA land inventories. Congress should stipulate that FmHA lands are sold to minority farmers at least in the same proportion as the farm population of a county.

A third issue is the availability of operating capital to farmers who have reached agreements through Chapter 12 bankruptcy. Many times, borrowers are not able to get further financing after successfully completing a bankruptcy plan. FmHA, as the lender of last resort, should be required to provide that capital to assure that the Chapter 12 process works.

A fourth issue involves FmHA's ability to attach government payments in their debt collection efforts. There ability has at times allowed FmHA to "starve out" a farm family be attaching needed government payments. We feel FmHA should be prohibited from attaching government payments that are needed for a family's farm operating and family living expenses.

In conclusion, I would like to say that the issues being discussed here are fundamental. Congress clearly expressed its intent in the 1985 credit package to recommit FmHA to the task of maintaining the semblance of family farm agriculture and working to rebuild the system. The real debate is whether our Government will work to save family farmers or work for their demise. I would like to end with this quote from agriculture expert Franz Schurmann:

> "History issues a stern warning. Countries that have abandoned their farmers have suffered disasters. Soviet agriculture still has not recovered from the 1930s decimation of an entire class of productive peasants.... The argument for some new farm policy is simple but elusive: somehow any country's well-being and security are bound up with a viable population of farmers. As much of the rest of the world is learning this lesson of history, we are rapidly forgetting it."

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POSITION ON FmHA REFORM LEGISLATION

1. FmHA should be required to restructure troubled loans whenever it would be less costly than foreclosure. FmHA should not be allowed to demand liquidation of secured property as a condition of debt settlement until all loan servicing options have been made available to the borrower.

2. The nomination period for county committee elections should be expanded to at least 45 days, and at least 30 days public notice should be given to farmers before the actual election. FmHA borrowers should be allowed to run for and serve on county committees.

3. Borrower appeals of FmHA decisions should be decided by administrative law judges(ALJ's), not FmHA employees.

4. Regulations should be strengthened to assure FmHA is returning its land inventory to eligible family farmers. Previous mortgagor should be given first right of refusal to lease or buy back FmHA foreclosed land inventories.

5. FmHA should be required to provide living and operating expenses to farm families throughout debt settlement negotiations. The Secretary should be required to publish substantive standards which outline specific expenses to be included for living and farm operating.

6. FmHA should be required to negotiate homestead retention prior to the farmer conveying the land back. Farmers should be allowed to keep outbuildings, eligibility for homestead retention should not be based on a $40,000 gross sale minimum, and any inventory property should be available for dwelling retention.

7. FmHA must provide specific protections for minority farmers such as assuring proper minority representation in proportion to farm population in a region on county committees and other public FmHA bodies. FmHA must report annually to Congress on the number of minority farmers who receive loans, forebearance and debt restructuring.

8. The burden should be placed on FmHA to inform the borrower of all loan servicing options available.

9. FmHA should be required to comply with all state credit laws such as right to mediation and farmstead redemption. FmHA should be prohibited from securing deficiency judgements against farmers who have been totally liquidated, either through foreclosure or voluntary conveyence.

10. FmHA should be prohibited from attaching government payments in its debt collection efforts.

Note: Two bills have been introduced(S. 1179 and H.R. 2340), that closely follow this position on FmHA reform.

Senator **Conrad**. Now we will hear from Dr. Max Glenn, executive director of the Oklahoma Conference of Churches and coordinator of the Oklahoma Ag-Link Coalition. Welcome and proceed with your testimony.

STATEMENT OF DR. MAX E. GLENN, EXECUTIVE DIRECTOR OF THE OKLAHOMA CONFERENCE OF CHURCHES AND COORDINATOR OF THE OKLAHOMA AG-LINK COALITION

Dr. **Glenn**. Thank you, Mr. Chairman. I will try to summarize quickly in the interest of time. I am a fifth generation farmer, minister and long-time rural advocate, born and raised in rural Oklahoma where my grandfather homesteaded in the Cherokee Strip. In March of this year, I stood by in the county courthouse while the county sheriff, my best friend during high school, was forced to sell my homeplace and the same day sell out an uncle and a cousin.

My connection with the Oklahoma farm crisis is not just this personal vignette. As the executive director of the Oklahoma Conference of Churches and coordinator of the Ag-Link Coalition, conference is a statewide ecumenical organization representing 18 denominations in Oklahoma. The Ag-Link Coalition is an effort which brings together farmers, ranchers, bankers, business people from some 35 different groups. It has been a real catalyst to bring together everyone in Oklahoma concerned about the rural communities in agriculture to deal directly with individual farm family challenges, to raise awareness of the agricultural farm crisis, and to utilize every means available to help the farmers stay on the land.

The coalition's programs include the maintenance of a statewide hotline since October 21, 1985, over which 15,000 distressed callers have told of the crisis in their lives caused by the ever-worsening financial reality of Oklahoma's agriculture and energy depression. This crisis has brought a tragic and premature end to the lives of 51 Oklahomans who have committed suicide in the last 12 months. From the housewife whose family heritage was being foreclosed by a relentless Farmers Home Administration as she threw herself on a burning trash heap, and say parenthetically that the county supervisor after her suicide said they had no intention of foreclosing on this couple, and within 30 days after her death, they had a sheriff sale and sold them out. And also, the land bank president in Oklahoma whose personal agony over policy he was required to effect left him, he felt, no course, and he too took his life. This crisis has also spawned a growing sense of anger, of outrage, and of betrayal by trusted advisers at lending institutions and land grant colleges. As the 47th State to join the Union, we in Oklahoma are close enough to our frontier to deeply dread the bizarre voices among us who brag of 2,000 armed men available at a moment's notice to "right the wrongs" at the point of a gun. In March, Sheriff Sam and his deputies wore flack jackets at the county sale that I just mentioned, and many of you probably saw the recent national coverage of a potential confrontation in Oklahoma thwarted by a cool-headed banker and a wise county sheriff.

Through our 24-hour Ag-Link hotline, we have heard the individual voices, the individual tragedies which are lived out in silence in their communities, 15,000 strong, however, saying the same thing over and over and over again. They command an audience, demand a response. As we have linked those 15,000 Oklahomans to a host of counseling, retraining, support groups, and legal services, we have seen certain trends develop that I am compelled to elevate to you today and through my written testimony.

Your debate may soon center on dollars involved in Farm Credit Service bailout. As Mr. Huff, it has been my privilege to work with him, the Credit Committee, has offered our specific program of true farm credit reform by highlighting our endorsement of the corresponding changes in Farmers Home Administration colender or guarantor of many FCS loans. My focus is on the lives of the people who are the end recipients of every decision you Senators make on our behalf. I want to turn the spotlight on a few of them in hopes that their experience will help you shape a much needed reform in farmer/creditor dynamics.

In the interest of time, I will not share all of the case studies here, but just highlight.

Item: debt settlement and deficiency judgment problems of FmHA quickly call to mind the young farmer whose father, a Lutheran minister serving several rural parishes, has been sensitive to and active in helping resolve Oklahoma's farm crisis. Right out of high school, this youngster took part in FmHA's young farmer program and started building his lifelong dream of his own farm. After several years of struggle and on the strong advice of the county supervisor, he liquidated the farm and all of his assets. Some debt remained, but the supervisor repeatedly assured him all would be forgiven. He had completed his part of the bargain. Starting his life anew from scratch and with his wife working, he went back to Oklahoma State University, and this year, his fifth year, on the verge of graduation, the county supervisor sent his portfolio to the Capital Credit Corporation of Fairfield, NJ, for collection, and he was one of those over 6,000 who received that untimely collection letter and his indebtedness had tripled in this 5-year period from interest. Through our intervention, we were able to get that changed.

Another item: the need for specificity in the release of living and operating expenses calls to mind the plight of the undersheriff of an eastern Oklahoma county who was completely shutdown, frozen out, and bad-mouthed by FmHA because he had an unauthorized heart attack and his wife had an unauthorized baby.

Now these are not isolated cases. We are hearing these over and over and over again, and there is nothing that makes me more angry than to hear the kind of insensitivity that you have experienced before your committee this morning.

Item: We have also been denied participation in the voluntary farmer-creditor mediation program in our State by Farmers Home Administrator.

My spoken testimony today is limited in time, but we must focus primarily upon supporting the integration of Farmers Home Administration amendments into the Farm Credit Service's bailout legislation. I cannot encourage you strongly enough to take a holistic view toward reform of the entire system of financing agriculture. Of necessity, though, I also elevate for this committee record the urgency of the need for moving this legislation as quickly as possible.

The human tragedy that results from current FmHA and Farm Credit System policy continues to mount as evidenced by the voices we have represented today. They are not the persistent complaints of a single, malcontent farming or ranching constituent. They represent the strength of our rural churches and schools, the fabric of our rural society. There must be a national statement by Congress that the bloodletting must stop, that the farmers and their creditors working together, can find ways to assure the survival of both. We cannot wait for the systems to correct themselves.

In anticipation of this opportunity today, I have recently sampled the FCS callers on our hotline and our coalition has conducted an intensive focus on FCS borrowers in one county of northwestern Oklahoma. It is my hope within the next week to deliver to Senator Boren with name, rank and serial number all of those farmers who are now ready to stand up and be counted and set forth in their own handwriting the experience that they have received. You, the committee members, must intervene by law because "their horses have the bit in their teeth," and the runaway system is out of control.

I spent over half of my professional life working in Appalachia, fighting the strip mining issue, and also the broad form deed in Kentucky, which you are probably familiar with. This was minor compared to what I am seeing and experiencing in the farm crisis now. The outrageous actions and inaction by those responsible for dealing the farmers the economic and social injustice is unmentionable. I believe that it is very appropriate, Mr. Chairman, that this hearing conclude with what is happening to people. Agencies deal with individuals in silence and in confidence, but sitting on a hotline and listening to over 15,000 farmers gives us a picture that needs to be shared and that we know of your commitment and your concern, and we commend you for that, and other members of your committee, but we must urge that the time is now to intervene and change.

I do not like to be a cryer of wolf, but I can assure you that today farmers are listening more carefully to those who are peddling violence and extremist philosophies, and it is a matter, as I talked with the FBI and the OSBI in our State, they assure me that it is not a matter of if there will be a major bloodletting and confrontation; it is a matter of when. It is my hope and prayers that you all will move fast enough to alleviate that kind of major revolution in this country. Thank you.

Senator CONRAD. Thank you.

[The prepared statement of Dr. Glenn follows:]

TESTIMONY OF DR. MAX E. GLENN

on behalf of the

OKLAHOMA CONFERENCE OF CHURCHES

and

THE OKLAHOMA AG-LINK COALITION

before the

UNITED STATES SENATE AGRICULTURE COMMITTEE

JUNE 9, 1987

Mr. Chairman and members of the Committee, I am Dr. Max E. Glenn, I am a farmer, minister and long-time rural advocate: born and raised in rural Oklahoma where my grandfather homesteaded in the "Cherokee Strip." In March of this year, I stood by as the county sheriff, my best friend in high school, was forced to sell my "homeplace" and the same day "sell-out" an uncle and cousin. More than 200 neighbors, relatives and friends stood by as a CBS News crew filmed the proceedings and a 70 year-old aunt sat passively in her wheelchair as her home was auctioned and the Farm Credit System added another 1,400 acres to its growing inventory of American farm land. (CBS News did not air the story because it was the same drama that had become an "old" story now.) My connection with the Oklahoma farm crisis is not just this personal vignette. I am the Executive Director of the Oklahoma Conference of Churches and Coordinator of the Oklahoma AG-LINK Coalition. The Conference is a state-wide ecumenical organization representing 18 participating denominations. The AG-LINK Coalition is an outreach effort of the Conference to respond to the now chronic problems facing farmers, ranchers, bankers and businessmen and their families throughout rural Oklahoma. It is a collaborative action and service oriented effort regularly involving 35 public and private agencies, organizations and alliances, with strong participation of farmers, rancher, and agribusiness representatives, whose goals include:

I. To deal directly with individual farm familes' challenges;

II. To raise awareness of the agricultural/farm crisis;

III. To utilize professionals to enable farm families the opportunities to maximize their return on viable farming operations; to relocate by matching opportunities with available skills, or to give direction for retraining and placement; and

IV. To develop funding mechanisms that will provide the revenues needed for full operational plan development.

The Coalition's programs include the maintenance of a state-wide hotline since October 21, 1985, over which 15,000 distressed callers have told of the crisis in their lives caused by the ever-worsening financial reality of Oklahoma's agriculture and energy depression. That crisis has brought a tragic and premature end to the lives of 51 Oklahomans in that time who have committed suicide: from the housewife whose family heritage was being foreclosed by a relentless Farmers Home Administration as she threw herself on a burning trash heap; to the Land Bank President whose personal agony over policy he was required to effect left him, he felt, no other recourse. That crisis has also spawned a growing sense of anger, of outrage, of betrayal by "trusted advisors" at lending institutions and land grant colleges. As the 47th state to join the Union, we in Oklahoma are close enough to our frontier to deeply dread the bizzarre voices among us who brag of 2,000 armed men, available at a moments notice to "right the wrongs" at the point of a gun. In March Sheriff Sam and his deputies wore flack jackets to the sale; and many of you may have seen recent national coverage of a potential confrontation in Oklahoma thwarted by a cool-headed banker and a wise county sheriff.

Through that 24 hour, AG-LINK hotline we've heard the individual voices, the individual tragedies which are lived out in silence in their communities - 15,000 strong, however, saying the same thing over and over again, they command an audience; demand a response! As we've linked those 15,000 Oklahomans to a host of counseling, retraining, support group, and legal services, we've seen certain trends develop that I am compelled to elevate to you today. Your debate may soon center on dollars involved in a Farm Credit Services bailout. Mr. Huff offered our specific program of true farm credit reform by highlighting our endorsement of corresponding changes in Farmers Home Administration, co-lender or guarantor of many FCS loans. My focus is on the lives of the people who are the end-recipients of every decision you Senators make on our behalf. I want to turn the spotlight on a few of them in hopes that their experience will help you shape a much needed reform in farmer/creditor dynamics.

ITEM: Debt settlement and deficiency judgement problems of FmHA quickly call to mind the young farmer who's father, a Lutheran Minister serving several rural parishes, has been sensitive to and active in resolving Oklahoma's rural crisis. Right out of high school that youngster took part in FmHA's young farmer program and started building his life-long dream of his own farm. After several years of struggle and on the strong advice of his County Supervisor, he liquidated the farm and all of his assets. Some debt remained, but the supervisor repeatedly assured him all would be forgiven: he'd completed his part of their bargain. Starting anew from "scratch" and with his wife working to support them both, this young man went back to college at Oklahoma State University to build a new career. Five years later, on the verge of his graduation with honors, and absent any contact from FmHA the whole time, his account was one of more than 6,500 accounts turned over quite precipitantly, to the Capital Credit Corporation of Fairfield, New Jersey for "collection." Interest alone had tripled the amount of that debt. The State Director's Office insisted they had no notice of the CCC referral; it was generated by the County Supervisor. It was compromised, finally, with the intervention of the AG-LINK Coalition and the strong and persistent advocacy of his father. It never should have happened! It has shattered the local credibility of that hapless County Supervisor.

ITEM: The need for specificity in the release of living and operating expenses calls to mind the plight of the Undersheriff of an Eastern County who was completely shut down, frozen out, and bad-mouthed by FmHA because he had an unauthorized heart attack and his wife had an unauthorized baby.

ITEM: While we talked of new guaranteed loan provisions, an Oklahoma banker I know still fusses and fumes about the credibility of his FmHA County Supervisor. He gave that banker and the farmer an "absolute" promise the guarantee for the loan would be approved the following Monday. They both moved on that promise only to have it denied by the Supervisor when Monday dawned and the farmer's bill payments began to clear the bank.

ITEM: The newest program developed in Oklahoma by the AG-LINK Coalition is a voluntary farmer/creditor mediation program. I've enclosed a flyer on it's uniqueness: a training and coordination specialty developed by our Commissioner of Agriculture Jack Craig. Under our State Supreme Court, it operates within a state wide network of regional dispute mediation centers, operated by local government, to resolve all kinds of disputes. The program is currently funded by the Department of Agriculture, Farm Credit Services of Wichita, (the 12th District Bank), and Oklahoma Farmers Union. Our FmHA State Director responded to the Commissioner Craig's proposal and said strict regulatory limitations would "extremely limit any opportunity to use the services of a mediator..." and funding limitations will prohibit financial participation "...at this time." We'd like to see you amend Title 7. United State Code, Section 1987, to require the Secretary's participation and funding of state and territorial debt adjustment assistance including dispute mediation programs.

My spoken testimony today, limited in time, must focus primarily upon supporting the integration of Farmers Home Administration amendments into the Farm Credit Services "bailout" legislation. I cannot encourage you strongly enough to take a holistic view toward reform of the entire system of financing agriculture. Of necessity, though, I also elevate for this Committee record the urgency of the need for moving this legislation as quickly as you can. Oklahoma State University reports 17,000 Oklahoma farm families in desperate straits this year, a full 25% of the farmers in our state. Judges in our rural communities report juvenile caseloads are up 300% this year, as family stress is reflected in the youth. Rural newspapers reduce publication to a single weekly issue: "you can't sell advertising to empty stores on main street." The human tragedy that results from current FCS and FmHA policy continues to mount as evidenced by the voices I've represented today. They are not the persistent complaints of a single, mal-content farming or ranching constituent. They are the chorus of voices from the heart of rural Oklahoma. They represent the strength of our rural churches and schools, the fabric of our rural society. There must be a national statement by Congress that the blood-letting must stop, that the farmers and their creditors working together, can find ways to assure the survival of both. We cannot wait for systems to correct themselves. A review of Farm Credit System trends in Oklahoma, clearly indicates the failure of voluntary corrective action and I'd like, through my written record, to document my findings.

Mr. Chairman, your Senate colleague from our fair state, the Honorable Don Nickles, first elicited some FCS trends which concerned me on April 5, 1986, in an Oklahoma City Hearing. Enclosed is the statement I offered at that time. In anticipation of this opportunity today, I have recently sampled the FCS callers on the Hotline and the Coalition has conducted an intensive focus on FCS borrowers in one county of Northwestern Oklahoma. It is my hope, and the request of every farmer interviewed, that I can shortly provide Senator Boren with "name, rank and serial number" of all of those "standing up to be counted." Today, however, I am both alarmed and saddened to report that since April, 1986, little has changed, despite published policy and active rhetoric on the part of the Farm Credit System. You, The Committee members, must intervene by law because "their horses have the bit in their teeth," and the runaway system is out of control.

The first trend I identified at that time was an apparent relentless press to purge borrowers from Land Bank and Production Credit Association loan portfolios through foreclosures, ordered out of the District Bank in Wichita, regardless of events or debtor's action which could have offered an alternative solution. At that time we heard the Bank announce the FCS policies of forebearance and restructuring. Our 1987 survey showed approximately 70% of the respondents were foreclosed despite efforts at negotiation, 90% were never offered forebearance, and 99% were never offered restructuring.

The second trend I identified then was an unreasonable discrimination against current owners; after foreclosure, new owners obtained the property at one-half (1/2) the amount of his debt when forclosed and were financed at interest rates a full 4 1/2 percentage points lower than his note called for and without stock purchase requirements. Had the original owner been given the same terms he could have "cash-flowed" and saved the cost of legal proceeding to both the farmer and lender. This practice persists! It represents a defacto repudiation of the cooperative purpose on which the Farm Credit System was originally established. Proposals like S.57 must be implemented before forclosure.

The third tend I perceived was a growing personal attitude problem on the part of FCS personnel: distain and disrespect of the owner as though he or she was personally responsible for low prices or the decline in land values. Even now FCS officials conveniently forget their late 70's lending practice of pulling potential borrowers off the street to offer them a "deal they cannot refuse." Startling, my 1987 survey indicated 75% of the FCS borrowers reported specific acts of harrassment, like calling at 11 pm at night, to demand payment. This in complete disregard of the Federal Fair Debt Collection Practices Act. Over 80% cited specific incidents of "broken promises," not documented in writing because farming used to be a cooperative effort between trusting partners. Besides, FCS personnel know even their own rules cannot be enforced against them in court. Congress has never given either federal or state courts the jurisdiction to hear fundamental issues of justice and fairness.

As I said at the commencement of my statement, I am a "long-time rural advocate." I deeply believe in American agriculture, as I know you do, and the continued family role to be played for the sake of rural America. I sincerely appreciate this opportunity to appear before you.

This concludes my statement, and I will be pleased to respond to questions.

ALLS, 6/5/87

OCC

Member Denominations

- African Methodist Episcopal Church
- African Methodist Episcopal Zion Church
- American Lutheran Church
- Association of Evangelical Lutheran Churches
- Christian Church (Disciples of Christ)
- Christian Methodist Episcopal Church
- Church of the Brethren
- Cumberland Presbyterian Church
- Greek Orthodox Church
- Lutheran Church in America
- Presbyterian Church, U.S.A.
- Society of Friends
- The Episcopal Church
- The Reformed Church in America
- The Roman Catholic Church
- United Church of Christ
- United Methodist Church

TESTIMONY OF
DR. MAX E. GLENN, EXECUTIVE DIRECTOR
OKLAHOMA CONFERENCE OF CHURCHES
UNITED STATES SENATE OVERSIGHT HEARING
HONORABLE DON NICKLES, PRESIDING
APRIL 5, 1986

Senator Nickles,

I appreciate the opportunity to appear at your Oversight hearing to discuss my concerns about the Farm Credit Services (Farm Credit System) programs and operations.

As you know from your own participation several months ago, the Oklahoma Conference of Churches has operated a farm crisis hotline, which we call "AG-LINK", since October 21, 1985. In the months since then we have seen certain trends begin to emerge. Unfortunately, certain incidents seem to reflect individual action on the part of a particular employee or officer of FCS. More importantly, though, the incident pattern, especially from the northern and western parts of Oklahoma, reflect official attitudes on the part of FCS which trouble me.

They lack common sense, and in many areas are devoid of common decency, justice or the due process of law guaranteed us by our Constitution. I know that FCS, by law, is not a Federal agency. In policy implementation of Public Law 99-205, the Farm Credit Amendments Act of 1985, and in response to its position as financier of one-third of the agriculture debt in the United States, the role responsibility and performanceof FCS must remain very visible to public scrutiny and very accountable to the Congress of the United States, of which you are a key part. Your hearing today is a welcome opportunity to accomplish both goals.

My concerns center on three major trends I see developing out of the hundreds of cases calling our hotline. They are confirmed further by employees of FCS who confidentially expose their own stress and heartache at the policies they are ordered to pursue unquestioningly. I will follow my concerns with positive recommendations to go along with the legislation you introduced on March 5, 1986. When you return to Congress next week, I intensely hope you and Senator Boren, as Oklahoma's Senate team, can quickly find the exact combinations of law which will protect FCS' financial integrity, but at the same time restore justice and equity to the process, and strengthen rural Oklahoma and the family farms which are the dominant thread of our economic and social fabric.

Oklahoma Conference of Churches
2901 Classen Boulevard
P.O. Box 60288
Oklahoma City, Oklahoma 73146
405-525-2928

Dr. Max E. Glenn
Executive Director

Dr. Eugene N. Frazier
President

From our cases, I first and foremost see a blind rush on the part of FCS to purge current farmers from their loan portfolio, regardless of events or debtor's action which may offer an alternative solution. I offer three specific cases to highlight my concern.

> CASE I. A family farm with an arrearage of $1,400 accelerated and recomputed unilaterally by FCS to $4,000 and foreclosed all without notice to the borrower. Only when the summons was issued were they notified and their cashier's checks in payment were rejected because the "paperwork was already done".
>
> CASE II. The total land debt of one farm couple was $12,000, with an annual payment of $3,000 due December 1. The PCA loan officer verbally agreed to a December 15 payment by the borrower; but December 2, the couple received a formal letter accelerating the note and initiating foreclosure.
>
> CASE III. Public Law 99-198, the Food Security Act of 1985, as you know, provided a dairy farm buyout program effective April 1, 1986. On a 30-day delinquency for one dairyman, FCS refused a partial pay offer and forced a liquidation sale on March 1, 1986. With the forbearance of his creditor, the dairyman would have cleared $350,000 from the April 1 program, enough to pay off his debt, with some left over. He lost it all and may face a deficiency judgement at the end of this blind rush.

A second trend I see developing within FCS offices is an unreasonable discrimination against current owners, in comparison with new buyers. In illustration of this trend is a case which was one of the first to use our AG-LINK facilities. The farmer had just been foreclosed by his Production Credit Association. Within a week, his farm was resold. The new buyer was given:

> (1) A purchase price for the farm which was equal to one-half of his mortgage balance at the time of foreclosure;
>
> (2) At an interest rate 4 1/2 full percentage points lower than the rate he had been paying; and
>
> (3) A waiver of the stock purchase requirement.

As the former farmer said, "I could have cash-flowed and saved my farm if I'd been given the same terms."

A companion piece of this trend is my third concern: a personal attitude on the part of growing numbers of FCS personnel involving disdain and disrespect of the owner as though he or she was personally responsible for low prices or the decline in land values. This attitude has consistently resulted in intimidation of or hostility in the farmer and a complete breakdown in communication between the parties.

Communication is further ruptured and distrust enhanced when some "official policy" prevents release of payment records and the way payments have been applied to the farmer's loan.

And, finally, trust vanishes completely when agreements developed verbally are so often suddenly repudiated and denied when it's too late to try to develop other financing.

As promised, I want also to advance at least three legislative chaNges which I would ask you to consider:

(1) Endorse and require strict adherence to the forebearance policy laid out in the March 12, 1986, letter to Attorney General Mike Turpen, a copy of which is attached to my testimony. In addition, require that existing operators be given current market breaks through a combination of factors like those in the "Fair Credit Plan".

(2) Write into the law a guarantee that lenders and borrowers both will have an opportunity to fully communicate, using tools like the mediation programs now being implemented in Minnesota, Wisconsin, Iowa, Kansas and, hopefully, soon to be developed in Oklahoma.

(3) Try to do something about the tax ramifications of this farm crisis so that borrowers who do negotiate a restructuring or a deed-back are not exhorbitantly penalized by capital gains, minimum income, or recapture of investment credit or estate savings.

Thank you for this opportunity to share with you this summary of the high level of frustration which we hear daily from farm men and women. To date we have received in excess of 2,000 phone calls. Words cannot convey the injustices and trauma now being experienced in Oklahoma and across the heartland.

MAR 12 1986

Farm Credit Services

245 North Waco, P.O. Box 2940
Wichita, Kansas 67201-2940
316/266-5100

RECEIVED
ATTORNEY GENERAL

March 4, 1986

Mr. Mike C. Turpen
Attorney General
State Capitol
Oklahoma City, OK 73105

Dear Mr. Turpen:

Thank you for your telephone call regarding our forbearance policy. The correspondence you have with Attorney General Bob Stephan's office is correct. The following is some additional information in response to your inquiry concerning our forbearance policy.

As you are aware, the deteriorating farm economy has resulted in increased numbers of farmers leaving their occupation either voluntarily or involuntarily. Unfortunately, this trend has led to increasing numbers of foreclosures by the Farm Credit System.

The Farm Credit System views foreclosures as a last resort and is only initiated after all other reasonable efforts to assist the borrower have been exhausted. The Farm Credit Banks of Wichita adheres to the forbearance policy of the Federal Farm Credit Board. A copy of this policy is enclosed for your information. This policy enables us to stay with farmers longer and allows the borrower time to work out of his situation. However, when it is determined that the borrower no longer has a reasonable chance to recover, we are left no choice but to initiate foreclosure and minimize our loss. Organized as a cooperative, we must pass on any losses incurred to other members. For a cooperative lender, this means higher interest rates to our members.

If we did not initiate foreclosure and minimize our losses on these loans that have no reasonable chance for recovery, interest rates would have to increase even further. This places a very heavy burden on the vast majority of our borrowers who are paying their loans on time.

In fact, many of our borrowers are refinancing elsewhere because they believe they have no obligation to subsidize through higher interest rates a minority of borrowers who are unable to repay their loans. If losses are not minimized by initiating foreclosure when appropriate by cooperative lending institutions, the cost of such losses is reflected in the form of higher interest rates to the remaining farmer/rancher/cooperative borrowers.

Mr. Mike Turpen
March 4, 1986
Page two

I believe the Farm Credit System will work with borrowers to the maximum extent that we have resources. Unfortunately, our resources are severely limited, to the point that we have sought and received assistance from Congress. The Farm Credit Amendments Act of 1985 has helped stabilize the system. The legislation has also helped protect borrower stock in the system. However, it is not a panacea for all of the system's or agriculture's problems.

Farm credit institutions must continue to operate as prudent lenders in an effort to protect the vast majority of our borrowers who are in sound financial condition. To do otherwise could only jeopardize the viability of all our borrowers.

Please feel free to contact Ron Wilson, Vice President-Legislative Services and Member Relations at any time to clarify any of the information enclosed or if you have additional questions.

Sincerely,

Geary Danielsen

Geary Danielsen
Manager-Legislative Services

GD:sh

enclosure

cc: Monte Reese
Ron Wilson

FORBEARANCE POLICY FOR PCAs AND FLBAs

The Forbearance Policy is as follows:

- Forbearance means to reach an agreement with a borrower as determined on a case-by-case basis, to renew, reschedule, defer payment, reamortize, refrain from initiating legal action against a borrower whose loan is in default or any other option not enumerated that allows the borrower to make payments on the loan.
- In considering borrower forbearance, the following conditions should be considered:
  - Is the borrower cooperative?
  - Is the borrower making an honest effort to meet the conditions of the loan contract?
  - Is the borrower capable of working out the debt burden as determined by an appropriate credit analysis of the borrower's present and projected financial condition?
- Before authorizing any foreclosure action against a borrower, the association shall consider, on a case-by-case basis, the above conditions for borrower forbearance.
- In the event the borrower refuses to negotiate in good faith a plan for forbearance, the borrower breaches an agreement negotiated pursuant to this policy, or the borrower is not capable of working out of the debt burden, the association shall take whatever legal action it deems appropriate to protect the interest of the institution including, but not limited to, foreclosure.

MEDIATION IN OKLAHOMA

A Grass-Roots Resource

Farmer/Creditor Mediation is a concept whose time has come, throughout the United States. The way in which it is developed in each state has proven to be as varied as the states themselves. Each has been tailored to the specific needs and abilities of the state and its people. Whether it's a "barn-raising" or a disaster response, Oklahoma's strongest human forte is the willingness of people to reach out to help their neighbors, and that is the guiding spirit of Oklahoma's mediation process.

Mediation in Oklahoma is generic: it's not just farmer/creditor – it's landlord/tenant; fighting families; employer/employee; neighbor/neighbor; victim/offender – any community dispute.

Mediation in Oklahoma is a local resource: when fully implemented, regional dispute mediation centers will be functioning throughout the state and individual mediators will be available in every community in the state to mediate disputes quickly, fairly, and with innovation.

Mediation in Oklahoma uses volunteers: all mediators in Oklahoma serve without compensation. They volunteer for training to learn to mediate various community disputes. They may seek training in specialized mediation techniques for specialized conflict (farmer/creditor; divorce; victim/offender), then offer to serve their community a few hours a month. A description of an Oklahoma mediator is on the other side of this page.

Mediation in Oklahoma is voluntary: referrals come from any source in the community, but the parties must agree to meet together and, with the aid of a neutral and trained third party, volunteer to solve their problem themselves.

Mediation in Oklahoma demonstrates collaboration: of governments; of religious partnerships; of public and private sectors; of people building community power. The program operates under the guidance (through regulations) of the Oklahoma Supreme Court. The regional centers may be developed by cities, counties, or District Attorneys. Funding for most programs and most mediator training originates from filing fees on civil cases. Farmers/creditor mediation training is funded by the Agriculture Mediation Program (AMP), a program of the State Department of Agriculture. AMP is operated under contract by the Oklahoma Conference of Churches, a 501 (c) (3) organization representing 18 religious denominations, and funded by the Department of Agriculture, Oklahoma Farmers Union, and the Farm Credit Services of Wichita. Guidance and technical assistance for AMP is provided by the Special Task Force on the Farm Crisis of the Oklahoma Bar Association

Mediation in Oklahoma is on the move: At the present time mediation services are available at the following locations –

Statewide: Consumer/Merchant disputes Office of the State Attorney General	(405) 524-4511
Statewide: Farmer/Lender disputes	1-800-AG8-LINK
Pawnee and Osage Counties: Pawnee/Osage Dispute Mediation Program	(918) 762-3464
Payne and surrounding counties: Dispute Resolution Center	(405) 624-9300
Major, Alfalfa, Blaine, Garfield, Grant, Harper, Woods, and Woodward Counties: Major County Dispute Mediation Program	(405) 227-2011
Oklahoma County: Community Dispute Mediation Center	(405) 236-0413
Tulsa County: Project Early Settlement	(918) 592-7786

Greer, Cotton, Texas, Grady, and Nowata counties will soon have regional programs serving a total of 26 additional counties. AMP has farmer/creditor mediators who will mediate statewide, out of the regional centers.

Mediation in Oklahoma needs: YOUR HELP!

(1) Neighbors volunteering to help the people in conflict in their community;
(2) People referring disputes in their community to their dispute mediation center; and
(3) Debtors and creditors alike participating in good faith to find solutions everyone can continue to live with.

A GOOD MEDIATOR

1. is a volunteer who has completed specialized training and:
2. who has good communication skills and can and does listen well;
3. is discreet and respects confidentiality;
4. is tolerant of and can work within a structured framework and maintain that framework under stress but without being controlling;
5. is trusted by people and to whom people can relate;
6. has had a variety of life experiences;
7. is flexible;
8. is fair and has good judgement;
9. is aware of own values, biases and prejudices and can set them aside during the mediation process in order to be impartial and objective;
10. is responsible;
11. can maintain composure and encourage others to do likewise; and
12. has a belief in the capability of an individual to suggest and jointly negotiate and agree to solutions to his or her own problems.

Senator CONRAD. I appreciate the testimony of all of you as members of this panel. I think this has been a very productive morning. We have gone section by section through the bill. We have gotten the reaction of the Administrator. We have found, to my dismay frankly, an attitude problem of rather serious proportions on the part of the Administrator. We have found a lack of seriousness in dealing with what is a desperate need. It is readily apparent to any of us who have been out in the small towns and farms across our States that there is an immediate need for change, an immediate need to revitalize and reform FmHA. It is our firm intention to include this in the credit package that will move through Congress this year. It must be done, and as you say most eloquently, it must be done now.

Again, my personal thanks for the attendance of all of you. I just want you to know that already this hearing has received significant attention in the Congress. The fact is that we have, I think, for the first time, a growing consensus on the Agriculture Committee that it is imperative that Congress take action, and we simply cannot wait for the administration, and certainly not the Administrator of FmHA. Thank you very much.

Mr. HUFF. Mr. Chairman.

Senator CONRAD. Yes, sir.

Mr. HUFF. I have some testimony here from the Dakota Resource Council, Dennis Dockter, farmer and mayor of Cogswell, North Dakota, I would like submitted for the record.

Senator CONRAD. Without objection we will do that.

Mr. HUFF. I also have a statement from Dorthea Schultz, on behalf of Big Horn Rural Alliance and Northern Plains Resource Council. We would also like to submit this statement for the record.

Senator CONRAD. Without objection.

Mr. HUFF. Thank you.

[The prepared statements of Mr. Dockter, representing the Dakota Resource Council, and Dorthea Schultz, chairperson of the Big Horn Rural Alliance and board member of the Northern Plains Resource Council, follow:]

UNITED STATES SENATE
COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY
TUESDAY, JUNE 9, 1987

TESTIMONY OF DAKOTA RESOURCE COUNCIL
DENNIS DOCKTER, FARMER AND MAYOR OF COGSWELL, NORTH DAKOTA

Mr. Chairman and Members of the Committee:

My name is Dennis Dockter and I am a farmer from Cogswell, North Dakota. I am representing the Dakota Resource Council which is a grassroots membership organization dedicated to preserving family farm agriculture. The Dakota Resource Council is also a member of the National Save the Family Farm Coalition, and I serve on the Coalition's Fair Credit Committee.

The Farmers Home Administration has strayed from its Congressionally intended purpose of providing credit to beginning and low equity borrowers. They are abandoning farmers now when the current situation in agriculture calls for leadership from what is supposed to be the lender of last resort. The recent federal court ruling in Bismarck, requiring FmHA to stop thousands of notices declared to be unconstitutional, further demonstrates the need to reform this agency which has lost sight of its intended purpose - to help family farmers.

Senate bill 1179 has several important features to help us out on the farm. The debt settlement provisions of this bill can help save farmers like myself and my neighbors. Many of us are threatened with the loss of our land, our chattel, our homes and our way of life. Instead of debt write down and other loan servicing options, we face foreclosure and liquidation. Nobody gains from this type of action. The FmHA must help their borrowers by offering them loan servicing, which Congress intended. This would save the taxpayers significant amounts of money since the government would, in many instances, lose much more through foreclosures than restructuring. The provisions in this bill would enable eligible borrowers to stay in business without going through the court system. It would eliminate the unnecessary and expensive court costs and attorney's fees which can further destabilize financially strapped farmers.

We also need legislation which strengthens the first right of refusal for previous owners, and allows the borrower to request that FmHA sign a lease agreement with that farmer before the agency actually acquires the land. This will give us some assurance that we will not be driven off the land, rather we can lease back our land and rebuild the operation. Previous owners must be given this right if we are to preserve the fabric of rural America.

Both my neighbors and myself currently face many of the problems addressed by this legislation. Commercial lenders should not have to completely liquidate a farmer before the Farmers Home Administration will make payment on a guaranteed loan. We need the burden lightened for retaining the homestead so that farm families are not displaced from their homes and removed from their only source of income. We can't allow FmHA to take our living and operating money, starving us off the farm, while they proceed with foreclosure. We need laws which would make FmHA responsible for informing us of loan servicing options and determining eligibility.

This Committee visited North Dakota and other Midwestern States in February and saw first hand some of the problems we face with FmHA. You learned of the proposed rule changes which could have eliminated thousands of borrowers from FmHA eligibility. At that time Senator Leahy promised us prompt action from this Committee to reverse what is happening to FmHA borrowers. With this in mind, I would urge you to include Senator Conrad's reform legislation as part of a comprehensive credit package which addresses the problems faced by borrowers in all lending institutions. Towards this end, the Dakota Resource Council supports the principles outlined in the testimony of Cecil Huff of the National Save the Family Farm Coalition.

I could be one of the farmers saved by this reform legislation. For too long it has been all or nothing with the Farmers Home Administration. As farmers, we face daily the problems which this legislation addresses. We also see every day the need for these reforms.

STATEMENT OF DORTHEA J. SCHULTZ ON S. 1179 ON BEHALF OF BIG HORN RURAL ALLIANCE AND NORTHERN PLAINS RESOURCE COUNCIL, BEFORE THE SENATE AGRICULTURE, NUTRITION, AND FORESTRY COMMITTEE, U.S. SENATE, JUNE 9, 1987

My name is Dorthea Schultz. I was born and raised in the Hardin, Montana area and have spent all my sixty-nine years in the ranching business; I'm a small cattle operator and an FHA borrower. I am writing as Chairperson of the Big Horn Rural Alliance of Hardin, Montana and as a board member of the Northern Plains Resource Council. We have been studying S.1179 introduced by Senator Conrad and find its reform proposals a must.

The debt restructuring must be done without question, immediately. It must and will cover most delinquent farmers and ranchers as all we need is a fair chance to try to recoup our losses and in so doing repay our loans in an orderly fashion.

County committee people are dedicated to their constituent's needs, but many we have talked to, say their suggestions are very seldom used, if ever. We need to make County Supervisors abide by the rules and be accountable, as committee people are suppose to have a very important role in the decision making. It's hard to get good people in this job, as they say it's a "thankless, payless job and the Supervisor doesn't use our ideas anyway."

The "Right of First Refusal" and buy or lease back is very important, to give farmer owners the chance to stay in farming until the economy turns around and he can again buy his land back.

To require FmHA to notify borrowers of their rights is also a must, as is independent appeals judges, homestead protection, and FmHA to inform borrowers of their servicing options.

One option I'm going to suggest adding is that when a County Supervisor or other official who is to be relieved of his duty because of negligence, misconduct or a job undone that he be fired not elevated to a better higher paid job still with FmHA.

We'll be watching this Bill (S.1179) closely and hope that it will pass in its entirety and things will soon be looking up for all of us. We strongly urge the Committee to include this excellent FmHa reform package as part of comprehensive legislation to help all farm borrowers.

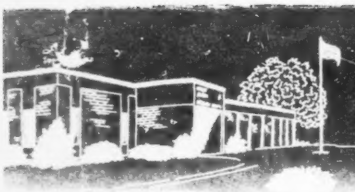
It is essential for this Committee to understand that until farm prices are raised all farm borrowers will continue to be in economic trouble. We urge this Committee to enact the Family Farm Act and turn around our entire rural economy. Thank you for this good bill.

Senator CONRAD. We will also hold the record open for the testimony of the North Dakota Farmers Union, the three tribes of North Dakota, and others who may wish to enter into the record additional testimony.

Thank you all.

[Whereupon, at 12:37 p.m., the committee was adjourned, subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]



NORTH DAKOTA
Farmers Union
Box 2136 — Jamestown, North Dakota 58402-2136
Phone: [illegible]

June 5, 1987

Senator Kent Conrad
Senate Office Building
Washington, DC 20510

Dear Kent:

We sincerely appreciate your invitation to have us appear before the Senate Agriculture Committee on Tuesday, June 9. Unfortunately, because of both scheduling and budgetary considerations we are not able to do so.

However, enclosed you will find our statement for submission for the hearing record. We would appreciate if you would submit it on our behalf for the record.

As indicated in our testimony, we have been analyzing Chapter 12 bankruptcy filings in our state, and some of the preliminary data from that study, especially as it relates to FmHA, is outlined in the testimony.

As you are aware we specifically began this study for the purpose of substantiating the need for FmHA reform and the specific need for debt write-downs without a total liquidation prerequisite.

We are pleased that you may be able to use some of this data in support of your bill. We only wish we would have had our report on our findings completed for this hearing.

Please feel free to use the information and testimony in whatever way you feel benefit your bill and the furtherance of FmHA reforms.

Yours truly,

NORTH DAKOTA FARMERS UNION

Alan

Alan Bergman
President

AB:st

Enclosure

cc Sen. Conrad's Bismarck Office

STATEMENT OF
ALAN BERGMAN, PRESIDENT
NORTH DAKOTA FARMERS UNION
CONCERNING FMHA REFORM
AND CHAPTER 12 BANKRUPTCY
TO
SENATE AGRICULTURE COMMITTEE
JUNE 9, 1987 HEARING

Mr. Chairman:

We regret that we are unable to present our testimony directly to your committee at this hearing. Unfortunately because of the combination of scheduling and budgetary considerations, we are not able to testify personally before this important hearing, but we are asking Senator Kent Conrad to submit our testimony for the record for your information and consideration.

As president of the North Dakota Farmers Union, I have had the opportunity to previously testify before this committee on the urgency of FmHA reforms, especially as it relates to the failures of FmHA to write regulations that are consistent with the intent of Congress.

We would like to refer your committee to the statements we submitted at your field hearing in Bismarck on February 9, 1987 and at your March 11, 1987 hearing in Washington, DC.

The recent ruling by Federal District Judge Bruce Van Sickle has again reaffirmed our position that FmHA's regulations are inconsistent with the intent of Congress as expressed in our nation's laws. We are pleased by his ruling. We believe that Congress must underscore this federal court decision, by adopting reform legislation that will further clarify the previous legislation and mandate the Farmers Home Administration to carry out Congressional intent.

We believe Congressional mandates have clearly instructed FmHA to follow a step by step procedure in assisting FmHA borrowers to receive debt relief. We further believe that it has been the intent of Congress that all the options it has made available must be considered by FmHA in servicing financially distressed and/or delinquent borrowers.

It is our understanding of Congressional intent that in working with an FmHA borrower, the Farmers Home Administration is to use a progressive list of servicing options, until FmHA and the borrower can find a satisfactory solution or determine that none of the options can meet those needs.

Simply stated, a borrower who cannot meet FmHA's repayment schedule must be given the opportunity to consider each option with the county FmHA supervisor before any adverse action is taken against that borrower.

While we have shortened the list of options that Congress has provided, the following progression should illustrate what FmHA actually should be doing under the law. If a borrower is delinquent or believes he will not be able to meet scheduled repayment, the first servicing option should be a reduction of the interest rate to the limited resource rate. If that does not create the needed additional cashflow, the borrower should be given the opportunity to reamortize the loan over a longer period. If that still does not create repayment ability, a combination of interest rate reduction and reamortization (rescheduling) of the loan should be pursued.

The next step, we believe, is for consideration of debt deferral. If that does not solve the problem, then FmHA and its borrower need to move to debt adjustment in which an individual loan or all loans are reduced to reflect current market value of the collateral. We believe a "recapture" or "appreciation" clause would be appropriate to permit FmHA to reinstate part or all of the debt write down to the extent that the value of the collateral increases prior to the end of the loan term.

In the final steps, and only in the final steps, should FmHA consider a partial or total liquidation of assets. If these assets involve land, then under the law FmHA is obligated to provide first opportunity to the borrower to lease and/or re-purchase the land that has been forfeited or foreclosed.

We do not believe that Congress intended to make these servicing options a game of roulette in which the borrower has to guess at which option might benefit him. We believe that Congress clearly was stating that each and every option must be considered and made available before any adverse action could be brought against the FmHA borrower.

The last time we were before this committee, we stressed the need for FmHA to allow debt adjustment without making liquidation a prerequisite for such debt adjustment.

We testified that certainly FmHA, as the lender of last resort, should be assisting the borrower to avoid bankruptcy, and therefore its policies should provide the borrower with better options than going through bankruptcy. We do not believe that Congress adopted Chapter 12 to take the place of FmHA servicing options. If the Congressional intent is properly carried out, there should be no reason or need of an FmHA borrower to file bankruptcy, either through Chapter 12 or some other Chapter.

To demonstrate both the need for debt adjustments by FmHA and to underscore that we believe that debt adjustment is a better avenue for both FmHA and the borrower, we have undertaken a study to analyze the Chapter 12 filings in our state.

We have not yet fully compiled our study and analysis into a formal report, but we felt it urgent that we share our preliminary findings with this committee.

Since Chapter 12 was enacted into law through May 20, 1987, there have been 74 Chapter 12 filings in our state. These filings originate from throughout our state on a fairly uniform basis, although there are more Chapter 12 filings from the western half of North Dakota. Sixty-two percent (46 filings) come from the western half, while thirty-eight percent (28 filings) originate from the eastern half of the state. This reflects the greater diversity of production and the higher rainfall in the eastern half of our state. (See attached map of distribution of Chapter 12 filings by county.)

Of the 74 Chapter 12 filings, 69 had adequate information to provide a review of the extent of FmHA debt held by these farmers. Forty-five of the 69 Chapter 12 bankruptcies (65%) involved some level of debt owed to the Farmers Home Administration.

The total listed debt in these bankruptcies amounted to $36.8 million. Debt owed to FmHA was listed at $13.1 million of the total or 36%. This is over twice the rate of percentage of FmHA's share of total agriculture debt in the state.

The following is a breakdown of the total debt listed in the Chapter 12 bankruptcy filings:

Land Debt - $23.3 million/63% of total debt

Chattel Debt - $7.5 million/20% of total debt

Priority Debt - $298,000/0.8% of total debt

Unsecured Debt - $3.9 million/11% of total debt

These listed debts do not add up to 100%, because in some cases we were not able to distinguish between land and chattel debt, especially when the same lender held both, which is a common practice with FmHA. We used only the identifiable amounts in our analysis.

On the asset side, these producers listed assets in their filings of $20.2 million. This provides an overall debt to asset ration of 1.82 of all the Chapter 12 bankruptcies in our state.

These assets were classified as follows:

Land Value - $11.7 million (58% of total assets)

Supplies and Equipment - $2.9 million (14% of total assets)

Livestock - $1.8 million (9% of total assets)

Grain Inventory - $1.5 million (8% of total assets)

Cash - $719,000 (4% of total assets)

Other Assets - $1.2 million (6% of total assets)

Forty-one of the 69 filings (59%) which had the necessary information involved debts owed to FmHA on land. Twenty-one of the filings (30%) involved chattel debts owed to FmHA. Seventeen (24%) had both land and chattel debts owed to FmHA. There were also two filings which listed FmHA as an unsecured creditor.

We believe it is significant that 17 of the 21 Chapter 12 farmers in which FmHA chattel debt was involved, owed both on FmHA chattel and FmHA land mortgages. Only four Chapter 12 filings involved only chattel debt owed to FmHA.

In analyzing these FmHA borrowers who had filed Chapter 12, we looked at what percent of the total land debt of these borrowers was held by FmHA. FmHA held 100% of the land debts owed by 14 of the 41 borrowers. The median level of FmHA land debt to total land debt of these borrowers was 78%. Only nine had a FmHA land debt to total land debt ratio of less than 50%. Land debts owed to FmHA by these bankrupt producers ranged from a low of $60,000 to a high of $1,006,572. The median land debt owed to FmHA was $245,121.

The chattel debt picture is even more interesting. The median percentage of the portion of chattel debt held by FmHA to total chattel debt of these borrowers was 100%. The percentage of FmHA chattel debt to total debt for these producers ranged from 62% to 100%.

Chattel debt owed to FmHA by these Chapter 12 filers ranged from $56,474 to $213,298. The median among these FmHA borrowers was $140,169.

To determine the capability of FmHA collecting debts from these borrowers, we compared FmHA debt to their total assets. Nineteen FmHA borrowers in Chapter 12 had FmHA debts that amounted to less than their total assets. Twenty-five of these borrowers in Chapter 12 had FmHA debts that exceeded their total assets. This, of course, ignores debts owed to any other creditors.

The ratio of FmHA debt obligations to total assets ranged from .12 to 4.5. The median FmHA debt to total asset ratio was 1.05. It should be noted that only three borrowers had FmHA debt to total asset ratios of less than .5. (Their ratios were .12, .48, and .48 respectively.)

This simply means that if these bankrupt producers ignored all their other creditors over half of them would not have sufficient assets to repay their FmHA debts.

Yet, when we add in their total debt obligations listed in the Chapter 12 filings, we find an even more grim picture. Total debts listed by these bankrupt FmHA borrowers in North Dakota ranged from $152,828 to $1,420,880. The median level of total debt of these Chapter 12 producers was $449,887.

On the asset side, the total assets of these FmHA borrowers who have filed Chapter 12, ranged from $36,000 to $586,904, with the median total assets at $218,747.

The total debt to total asset ratio of these FmHA borrowers from North Dakota who have filed Chapter 12, ranged from 1.1 to over 5.4. The median debt to asset ratio of these FmHA borrowers was 2.2.

This compares with the total debt to total assets ratio of all Chapter 12 filings from North Dakota, which ranged from .6 to over 5.4. It should be emphasized that only five of the sixty-nine Chapter 12 filers had debt to asset ratios of less than 1.0, and none of those five were FmHA borrowers.

We believe the preliminary findings of our study and analysis of Chapter 12 filings by North Dakota farmers shows that a high percentage of these bankruptcies are directly related to FmHA debt, and more pointedly, to the failure of national FmHA policies to permit use of all servicing options to assist these borrowers, especially debt adjustment.

We would contend that if FmHA were carrying out the mandate of Congress and if FmHA were truly acting in its capacity as the lender of last resort, there should not be a single Chapter 12 filing involving FmHA debts.

It is interesting to note that of the FmHA borrowers in our state who have filed reorganization plans, these plans consistently utilize the same servicing options that were supposed to be available through FmHA. The reorganization plans include reduced interest rates, rescheduling and reamortization, and debt adjustments to the current value of the collateral.

From our preliminary study of these Chapter 12 filings, it appears to us that FmHA borrowers are having to go to bankruptcy court to get the relief that Congress said they should be receiving through FmHA.

We are convinced that Chapter 12 is more expensive to the producer and in the long run will be more expensive to the government and the taxpayer than it would be if FmHA followed the previous mandates of Congress.

However, the regulations promulgated by FmHA and the administrative notices that further explain and interpret these regulations have not carried out the direction of Congress.

The American family farmer cannot afford to go to court with a class action lawsuit every time that FmHA decides to subvert or circumvent the law and Congressional intent.

We, therefore, are pleased to give our support to the legislation that has been introduced in the Senate by Senator Kent Conrad from our state, and the similar legislation that has been introduced on the House side by Representative Byron Dorgan.

We would also like to make two additional points:

Today is the last day for nominating candidates for FmHA committee members in North Dakota. FmHA is still using interim regulations to conduct this election and the nominating process.

These interim regulations prevent FmHA borrowers from having a jury of their peers serve on the committee, because they prohibit current FmHA borrowers from being candidates for the committee positions.

It is a slap in the face of FmHA family farm borrowers to know that they are categorized with convicted felons and dishonorably discharged service personnel in the listing of those who are not eligible to run for FmHA committee posts.

We urgently request Congress to intervene and set the FmHA county election and nominating process back on track so that it operates in the same philosophy as our ASCS committee elections.

Secondly, while we recognize that it may not affect many producers, the delay in the supplement appropriations and authorization for the Commodity Credit Corporation has created a hardship for some producers who were awaiting moneys under the contracts they signed with the Conservation Reserve Program in order to pay FmHA obligations. The delay means some of them will not be able to meet those commitments on schedule.

It would be a travesty if these producers were not given an extension on their FmHA payment obligations. If ASCS cannot meet their contract obligations under CRP, these producers should not be penalized for not meeting their FmHA contract obligations.

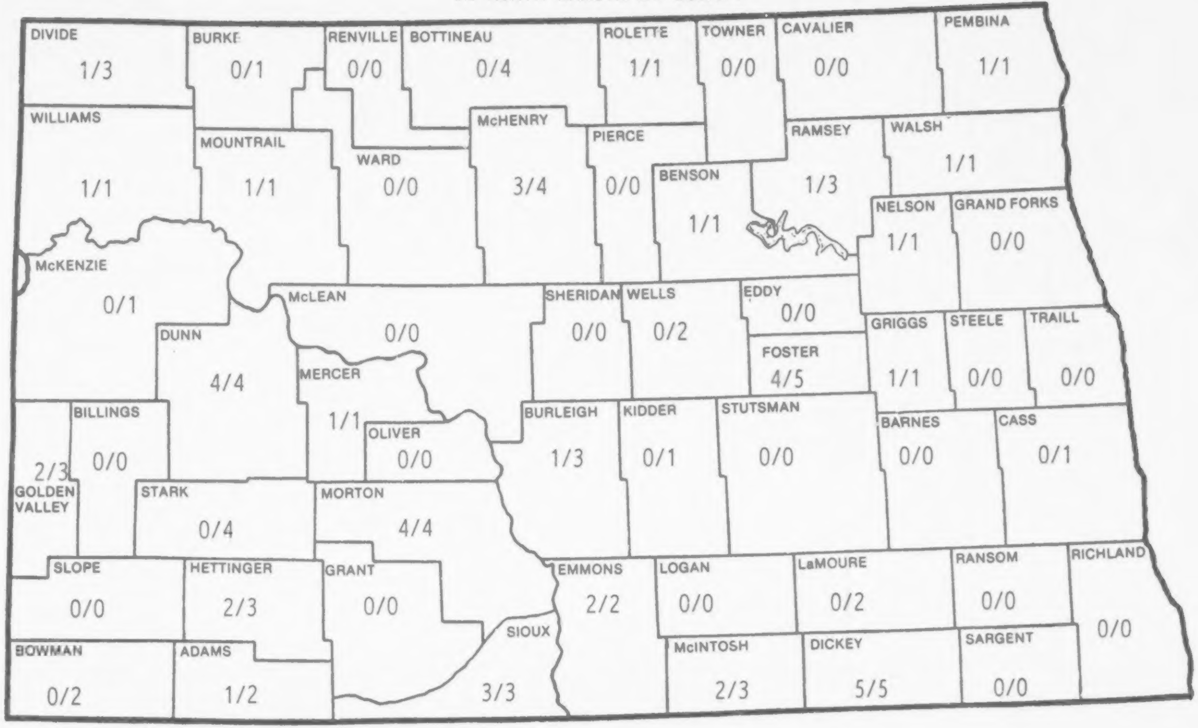
Upon completion of our study and analysis of the Chapter 12 bankruptcies and its relationship to FmHA debts, we will be pleased to forward copies of our report to the committee, and to respond to any questions.

Respectfully submitted

Alan Bergman, President

North Dakota Farmers Union

CHAPTER 12 BANKRUPTCIES
IN NORTH DAKOTA BY COUNTY


DIVIDE 1/3
BURKE 0/1
RENVILLE 0/0
BOTTINEAU 0/4
ROLETTE 1/1
TOWNER 0/0
CAVALIER 0/0
PEMBINA 1/1
WILLIAMS 1/1
MOUNTRAIL 1/1
WARD 0/0
McHENRY 3/4
PIERCE 0/0
BENSON 1/1
RAMSEY 1/3
WALSH 1/1
NELSON 1/1
GRAND FORKS 0/0
McKENZIE 0/1
McLEAN 0/0
SHERIDAN 0/0
WELLS 0/2
EDDY 0/0
FOSTER 4/5
GRIGGS 1/1
STEELE 0/0
TRAILL 0/0
DUNN 4/4
MERCER 1/1
OLIVER 0/0
BURLEIGH 1/3
KIDDER 0/1
STUTSMAN 0/0
BARNES 0/0
CASS 0/1
GOLDEN VALLEY 2/3
BILLINGS 0/0
STARK 0/4
MORTON 4/4
SLOPE 0/0
HETTINGER 2/3
GRANT 0/0
SIOUX 3/3
EMMONS 2/2
LOGAN 0/0
LaMOURE 0/2
RANSOM 0/0
RICHLAND 0/0
BOWMAN 0/2
ADAMS 1/2
McINTOSH 2/3
DICKEY 5/5
SARGENT 0/0

BANKRUPTCIES INVOLVING FMHA DEBTS / TOTAL BANKRUPTCIES
45 / 74*

*5 FILINGS DO NOT HAVE SUFFICIENT DATA TO DETERMINE IF FMHA DEBT IS INVOLVED

Bill LaFrance

STATEMENT OF
DONALD PAY
TECHNICAL INFORMATION PROJECT
SUBMITTED TO THE SENATE AGRICULTURE COMMITTEE
JUNE 9, 1987

The Technical Information Project (P.O. Box 682, Pierre, South Dakota 57501) is a public interest research organization addressing primarily issues of environmental protection. We appreciate the opportunity to address problems associated with loan guarantee and land disposal policies of the Farmers Home Administration (FmHA).

Recently FmHA's South Dakota office concurred in a sale of 836 acres at Igloo, SD, to Consolidated Management Corporation of Nevada (CMC). A small portion of this land had previously been used for industrial purposes. The vast majority of the land had been used for grazing of cattle and sheep, and includes two large water wells which supply a local town and rural water system.

CMC intends to use the purchased property to unload and store waste ash prior to processing that ash to remove marketable metals. Currently, sewage ash containing high levels of toxic metals (cadmium and lead) is being transported to Igloo from Minneapolis/St. Paul in railroad grain cars. In addition to this sewage ash CMC indicated to FmHA that they would seek other waste ash including sewage ash from Chicago, Detroit and Los Angeles, as well as fly ash from coal fired power plants.

Our major concern before this Committee is that FmHA apparently violated the National Environmental Policy Act as well as their own regulations, public mandate and stated policy when considering this sale. We believe FmHA's actions could contribute to heavy metals contamination of rangeland and shallow aquifers, and may result in loss of grazing lands and water supply, and potentially in a cleanup action with resultant financial liability if CMC goes bankrupt.

Consider these facts:

--FmHA concurred in a lease-purchase agreement prior to implementing the agency's responsibilities under NEPA.

--FmHA issued an after-the-fact and totally deficient Environmental Assessment (EA) (see attached Assessment and Comments) and Finding of No Significant Impact (FONSI) in May. An FmHA employee stated that the decision to concur in the sale was made in January, 1987, and that the EA and FONSI were completed subsequent to the decision.

--FmHA allowed CMC to begin unloading ash at the property in January, despite clear regulatory prohibition against applicants' taking actions which are the subject of the application (7 CFR 1940.309(e)).

--FmHA, contrary to its regulations (7 CFR 1940.309), failed to consult the local unit of government concerning the planned sale. In fact, the local Provo Township Board of Supervisors is unanimously opposed to the ash facility. Area ranchers are likewise opposed.

--FmHA failed to disclose in its EA that the sale also included the two water wells which supply the towns of Igloo and Provo, and area ranchers. FmHA made no effort to ensure that townspeople and ranchers would be able to continue using this source of water. The ash processing facility will use large amounts of water for industrial purposes.

--FmHA didn't determine the extent of CMC's compliance with a State permit for the facility. CMC has been cited for two violations of permit conditions, and existing evidence suggests violations of up to four more conditions to date.

--FmHA did not investigate the financial condition of the corporation to determine whether it will be able to make payments as well as carry out its proposed operation. Indeed, CMC has petitioned the State for a reduction in a cash escrow requirement because the company cannot pay for the necessary equipment for ash unloading and processing. The company may not be able to complete its contracted work, thus leaving behind huge stockpiles of metals-contaminated ash at Igloo. Would FmHA incur any of the financial liability associated with a cleanup of the site?

--FmHA didn't investigate the potential for health impacts associated with the facility. In just four months of operation, workers at the ash unloading facility have developed skin rashes. Recent research suggests that toxic metals exposure (through substances such as sewage sludge) may cause or contribute to Lou Gehrig's Disease (amyotrophic lateral sclerosis).

--FmHA noted in its EA that the CMC ash processing technology is "experimental." The US-EPA knows of no other use of this technology to process ash. Despite this, the FmHA made no attempt to assess the appropriateness or impacts of the proposed technology.

--FmHA considered no alternatives in its EA. Alternatives such as on-site ash processing (at waste stockpiles in existence) would negate the need for long-distance transport of ash in grain cars on our nation's rails. Alternative uses of the property such as grazing were not considered.

We feel this situation is an example of failure by a federal agency to comply with its mandated policy and governing laws and regulations. FmHA could have protected local rural economic interests as well as the environment and resource by honoring the previous loan guarantee, taking the property into their own inventory, and disposing of it properly to eligible borrowers (i.e. local ranchers). Instead, they have contributed to the economic, environmental and health problems of a rural community, and have put the agency at risk for potential liability in the event of environmental contamination.

Attachments:

(1) Environmental Assessment and Finding of No Significant Impact by FmHA

(2) Comments submitted by Technical Information Project on the above

Public Notification of FmHA's Finding of No Significant Environmental Impact

The Farmers Home Administration, (FmHA), has received a request from the Southern Hills Bank of Custer, South Dakota for concurrence in the sale of the former Unitram property at Igloo, South Dakota to the Consolidated Management Corporation, (CMC), of Reno, Nevada. CMC proposes to use the site to process sewage sludge ash from the Metropolitan Waste Control Commission,(MWCC), of St. Paul, Minnesota. The sludge ash will be transported from St. Paul in covered gondola cars via Bulington Northern Railroad. The project will be sited and housed in existing buildings on the old Army ordinance depot at Igloo, South Dakota. The sludge, a non-hazardous waste material, will be processed to recover metals, and then converted to a lightweight aggregate for use in the construction industry.

FmHA has assessed the potential environmental impacts of this proposed action and has determined that it will not significantly affect the quality of human environment. Therefore, FmHA will not prepare an environmental impact statement for this proposed action.

Any written comments regarding this determination should be provided within fifteen (15) days of this publication to Dexter Gunderson, State Director, Room 308, Federal Building, Huron, South Dakota 57350. FmHA will make no further decision regarding this proposed action during this fifteen-day period. Requests to review the FmHA environmental assessment upon which this determination is based or to receive a copy of it should be directed to this same address.

United States
Department of
Agriculture

Farmers
Home
Administration

Room 308, Federal Building
200 Fourth Street SW
Huron, South Dakota 57350

Subject: Finding of No Significant Environmental Impact and
and Necessary Environmental Findings for: Consolidated
Management Corporation and Celar Systems, Inc., Edgemont, SD

To: Project File

The attached environmental assessment has been completed for the subject proposal by the FmHA environmental reviewer. After reviewing the assessment and the supporting materials attached to it, I find that the subject proposal will not significantly affect the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

I also find that the assessment properly documents the proposal's status of compliance with the environmental laws and requirements listed therein.

DEXTER H. GUNDERSON
State Director

FmHA Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination should be sent to
Secretary of Agriculture, Washington, D.C. 20250

Environmental Assessment
Consolidated Management Corporation
CELAR Systems, Inc.
Edgemont, SD

I - Project Description and Need

Both of the above Nevada based corporations are privately owned by stockholders, James R. Brown, President, and Johnie T. Patton, Secretary/Treasurer. They propose a joint venture operation via contract with Metropolitan Waste Control Commission (MWCC), St. Paul, Minnesota, to process sewage sludge ash for recovery of heavy metals. Final residue is to be converted into useful building products as light weight aggregate. Temporary unloading operations are to be conducted using the facilities of the former Unitram property, a part of the old Army ordinance depot at Igloo, South Dakota that is being purchased from the Bank of Edgemont. The main metals recovery operation will take place on land adjacent to the Unitram property. The ash materials will be transported from St. Paul, Minnesota, in covered gondola cars via Burlington Northern railroad.

The primary impetus behind the project is the result of a bid solicitation by the MWCC wherein they sought proposals for sludge ash disposal on a utilization basis. (See Exhibits II & III, South Dakota Board of Minerals and Environment Permit book, and the Controlled Environment Leach and Recovery System, CELAR, book.) While classified as a nonhazardous waste, the City of St. Paul and the State of Minnesota have blocked ash dumping in landfills because the heavy metals may pose a threat to groundwater.

Consolidated Management Corporation (CMC), in concert with CELAR, Inc., was awarded the contract to remove and process 230,000 tons of accumulated sludge ash from storage ponds at the MWCC plant. They have secured a permit (Exhibit IV) from the South Dakota Board of Minerals and Environment to operate their patented CELAR metals recovery system at the Edgemont site. They also have joined with the Mineral Resource Research Center (MRRC) of the University of Minnesota to use MRRC patents and processes for processing and disposal of the spent ash.

There is an obvious need across the country for safe and sanitary sludge ash disposal. The proposed method shows promise for both recycling this material and turning a profit. The FmHA concurs that projects of this type are necessary.

II - Primary Beneficiaries and Related Activities

The planned operation will introduce new tax base and economic growth in the Fall River County area and generate profits for the operating company that will be shared by the Metropolitan Waste Control Commission and by the University of Minnesota Mineral Resource Research Center as described in the contract found in Exhibit III. The initial employment of 30 to 50 persons will also be an important factor to the local economy.

According to the December-1986 labor bulletin, Fall River County has a labor force of 3,577 and an unemployment rate of 4.9 percent; a substantial "underemployment" factor also prevails in low population areas, and also some understatement of the unemployment rate is also built in, according to information supplied by Van Lindquist, director of the Sixth Planning and Development District in South Dakota. The new development anticipates 30 initial employees with a high of 50 for the first contract and start up costs of $1.75 million, according to on-site manager, Rett Albers.

Company spokesmen advised that publicity generated by MWCC has inundated Consolidated Waste Management with inquiries from the major cities of Chicago, Detroit, Los Angeles, and many lesser communities which also have sewage ash problems. Other potential sources of ash are major utility companies and manufacturers, according to on-site manager, Rett Albers. A secondary beneficiary will be the Burlington Northern railroad, which will transport the ash materials to the processing site in South Dakota.

cumulative impact

Exhibits II & III predict possible economic returns that could accrue to CMC and its cooperating partners, MWCC and the University of Minnesota MRRC. Because of the proprietary nature of the technical processes involved and the experimental nature of the project, it is difficult to assess and quantify these returns at this time.

III - Description of Project Area

The project area is detailed in maps provided in Exhibits II & III and will not be reiterated in detail here. While CMC will occupy about 4,000 acres of the original 15,000 acre Army depot, only a small core area of the 836 acre Unitram site will be used and this only as a temporary car unloading facility. The materials will then be trucked to an adjacent site to undergo the CELAR metals recovery process. The car unloading operation will also be moved to the adjacent site when a new facility can be completed, according to Rett Albers, on-site manager. The site is 20 miles south of Edgemont, South Dakota, and approximately one mile from the village of Igloo, and is a part of the former World War II Army ordinance depot. The attractive feature of this property that prompted its purchase lies almost entirely in the rail access it provides and other infrastructure that would be prohibitively expensive to acquire and build from scratch.

The comprehensive plan shows that most of Fall River County surrounding the site is in agricultural grassland. None of this land is designated as prime farm land, but about seven percent is listed as farm land of statewide importance. Land bordering the depot to the north, west and south is a part of the Buffalo Gap National Grassland managed by the U. S. Department of Agriculture, Forest Service.

IV - Environmental Impacts

1. Air Quality - Management spokesmen advise us there will be no forced air usage in the CELAR process. The ash will be transported and stored in covered hopper cars on

railroad sidings until processed. It will then be pelleted and reloaded in covered cars pending shipment to customers in the construction industry through an aggregate marketing subsidiary of CMC at St. Paul, Minnesota. The operation is designed for zero air emissions. This area is not in a Clean Air Act non-attainment area.

2. Water Quality - Water will be supplied from the water plant built by the Army that supplies operational needs and also the town of Provo, South Dakota. CMC spokesman Rett Albers confirmed they are complying with existing regulations of the Federal Water Pollution Control Act and Safe Drinking Water Act pertaining to the wells involved and customers served. Water usage from the system for the CELAR process will average 25,000 gallons per day and is also a zero discharge system.

   Exhibits I, II & III describe the CELAR process, which is touted as a zero discharge system. The chemical thiourea is the primary leaching agent and is rated as bio-degradable, non-toxic and odorless. The CELAR process is an offshoot of industrial mining research co-sponsored by the Office of Research and Development, U. S. Environmental Protection Agency. (See Exhibit II.) The resource recovery permit (Exhibit IV) outlines certain berming and liner requirements for both the process equipment and the settling ponds designed to insure zero discharge.

3. Solid Waste Management - It appears that the real challenge of this proposal will be the innovative disposal of the spent ash after the metals have been recovered. There appears to be adequate safeguards to insure that this material is disposed of in an environmentally safe manner. The contract between CMC and the MWCC (Exhibit III) requires weekly reports on how the ash has been processed, utilized and disposed of. This agreement also provides for retainage on payments to CMC to insure process completion. The involvement of the University of Minnesota MRRC is an added inducement to proper disposal. Finally, the resource recovery permit also provides that CMC furnish a $1,000,000 performance bond.

4. Land Use - As previously noted, CMC was attracted to this site by the existing rail access and other infrastructure. The Unitram property will basically be used only for ash storage, utilizing existing buildings. The actual CELAR metals recovery will take place on adjacent property purchased by CMC. The process equipment is modular and will be shipped to the site for erection.

   This site was converted from Agricultural use back when the World War Army depot was built. It has been more-or-less idle since then. The CMC project will not significantly alter the existing facilities.

It is not expected that this project will significantly affect nor encroach upon the neighboring National Grassland. Even if the present one-year contract is renewed and the project expanded, there is adequate space available without taking additional land out of production. Actually, it seems more likely that if a continued need for this process is shown, that sites in other states near the ash producers will probably be developed.

5. Transportation - Burlington Northern railroad, which is already in place, serves as the primary form of transportation serving this project. It is not anticipated that there will be significant truck traffic in and out of the project that would adversely impact local roads.

6. Natural Environment - As indicated in the foregoing land use discussion, it is not expected that project facilities will encroach upon adjacent grasslands or potential wildlife habitats.

7. Human Population - This project will not involve the relocation of people and will put no strains on necessary community services. Existing public services at the site and in the adjacent Edgemont community will adequately accommodate the project workforce.

8. Construction - The CELAR plant is modular, transported from its point of fabrication in Reno, Nevada to assembly on its own floating bed sub-structure. No concrete is required to accommodate the plant. The only construction proposed is the remodeling of the existing buildings and the construction of the lined beds and berms necessary to contain any possible leakage.

9. Energy Impacts - The only significant power needs for the project are covered by the company's own 750 kw diesel generators of the power module, according to Vice President Dale Phares.

10. Miscellaneous Impacts - No miscellaneous impacts, including noise, safety, vibrations or aesthetic considerations, of any significance were identified.

V - Compliance with Advisory Council on Historic Preservation

The National Register of Historic Places indicates there are no listed properties in the immediate vicinity. The review by SHPO is attached as Exhibit V. The project is not inconsistent with the Archaeological and Historical Preservation Act.

VI - Compliance with the Wild and Scenic Rivers Act

The project is not adjacent to either a listed or inventory river.

VII - Compliance with the Endangered Species Act

As indicated in Paragraphs IV 4 and IV 6, this project is not sited so as to impact an endangered or threatened species or critical habitat.

VIII - Compliance with the Farmland Protection Policy Act and USDA DR 9500-3, Land Use Policy

As previously indicated, Fall River is a largely agricultural county, but it contains no prime farm land and little land of statewide importance. Because of the siting of this project on an existing developed area, it is not expected that there will be any encroachment on adjacent agriculture land, including the Buffalo Gap National Grassland.

IX - Compliance with E.O. 11988 Floodplain Management, and E.O. 11990 Protection of Wetlands (E.O. 11900)

This area of Fall River County has not been mapped, but there are no known floodplains on the site. Again, because of the siting on an existing developed area, there will be no encroachment upon wetlands.

X - Consultation Requirements of E.O. 12372, Intergovernmental Review of Federal Programs

A formal intergovernmental review of this project was not initiated. However, the project was reviewed by the SHPO and was examined by the South Dakota Department of Water and Natural Resources both during the permit process and the corresponding public hearing.

XI - Environmental Analysis of Participating Federal Agency

The project will be funded and financed through private commercial sources. No Federal permits will be required. The State Resource Recovery Permit is attached.

XII - Reaction to the Project

According to Edgemont banker Greg Mayes, the pending sale of the Unitram property to CMC is common knowledge in the area, and no adverse concerns of an environmental nature have been heard. If anything, the reaction has been positive, according to Mayes. CMC Vice President Dale Phares advised no objections have been filed since the public hearings were conducted as part of the South Dakota permit process. He also states there has been extensive local, state and national radio, press and TV coverage of the new enterprise over a period of six months.

XIII - Cumulative Impact

There are no other similar type operations in South Dakota or in nearby adjacent states at this time. While a successful project here could lead to additional/expanded facilities and projects, as was indicated, new projects would more likely be located elsewhere.

XIV - Adverse Impacts

No significant adverse impacts have been identified in this assessment; however, concerns for the environmentally safe disposal of spent ash were discussed in Paragraphs IV 2 and 3.

XV - Alternatives

1. Alternative Locations - On-site manager, Rett Albers, advised that CMC considered a site across the river from MWCC near St. Paul, an abandoned Armour plant three miles from MWCC and another site at Rosemont, Minnesota near St. Paul. They then became aware of the subject Unitram facility in South Dakota which they were very attracted to because the location would be more central to their home base in Nevada and to the upper Midwest and Western states which they propose as a market area. They were also much attracted to the Unitram infrastructure already in place (see Paragraph III) that could be made operational quickly and especially by the good rail access and siding facilities for car storage, all of which would be cost prohibitive if built from scratch or at a less improved site, according to company spokesmen. In the feasibility deliberations of CMC, the Edgemont site (and later the Unitram site) was concluded as a perfect fit for the processing operation.

2. Alternative Designs - To our knowledge, the CELAR metals recovery process is one of the few presently developed to an operational status. Exhibits I and II indicate this to be an environmentally safe process, and no other processes were examined.

3. Alternative Projects Having Similar Benefits - The MWCC bidding process is described in Exhibit III. As indicated, in addition to CMC, the University of Minnesota's MRRC also submitted a bid for pelletizing the ash without removing the metals. It appears that the melding of these two proposals is the ideal option.

4. No Action - There appears to be a great need for this type of development, along with adequate environmental safeguards, and no-action was not considered.

XVI - Mitigation Measures

Environmental safeguards are discussed in paragraphs IV 2, 3, and 4 and VIII. Again, the various participating agencies in this project, including the MWCC and the University of Minnesota MRRC have shown a significant commitment to developing environmentally safe disposal processes.

XVII - Consistency with FmHA Environmental Policies

There were no environmental factors discovered in this assessment that are inconsistent with FmHA environmental policies.

XVIII - Environmental Determinations

Based on an examination and review of the foregoing information and such supplemental information attached hereto, I recommend that the approving official determine that this project will not have a significant effect on the quality of the human environment.

I recommend that the approving official make the following compliance determination for the below-listed environmental requirements:

	Not In Compliance	In Compliance
Clean Water Act		✓
Federal Water Pollution Control Act		✓
Safe Drinking Water Act		✓
Endangered Species Act		✓
Wild and Scenic Rivers Act		✓
National Historic Preservation Act		✓
Archaeological & Historic Preservation Act		✓
E.O. 11988 Floodplain Management		✓
E.O. 11990 Protection of Wetlands		✓
Farmlands Protection Policy Act		✓
USDA DR 9500-3 Land Use Policy		✓
State Office Natural Resource Management Guide		✓

I have reviewed and considered the types and degrees of adverse environmental impacts identified by this assessment. I have also analyzed the proposal for its consistency with FmHA environmental policies, particularly those related to important farmland protection, and have considered the potential benefits of the proposal. Based upon a consideration and balancing of these factors, I recommend from an environmental standpoint that the project:

[✓ Be approved]
Not be approved because of the attached reasons

Signature of Preparer

4-1-81
Date

Farm Spec [illegible]
Title

I have reviewed this environmental assessment and supporting documentation. Following are my positions regarding its adequacy and the recommendations reached by the preparer. For any matter in which I do not concur, my reasons are attached.

	Do Not Concur	Concur
Adequate Assessment		✓
Environmental Impact Determinations		✓
Compliance Determinations		✓
Project Recommendations		✓

James D Valez
Signature of Environmental Coordinator

4/1/87
Date

Technical Information Project
P. O. Box 682
Pierre, South Dakota 57501

April 25, 1987

Mr. Dexter Gunderson
Farmers Home Administration
Room 308
Federal Building
Huron, South Dakota 57350

RE: Finding of No Significant Impact
and Environmental Assessment--
Consolidated Management Corporation/Celar Systems, Inc. sludge
ash facility.

Dear Mr. Gunderson:

The Technical Information Project, a South Dakota non-profit corporation, objects to the finding of no significant impact in the FmHA's proposed concurrence in the sale of the former Unitram property at Igloo, South Dakota, to Consolidated Management Corporation of Reno, Nevada. Our objections, detailed below, are to the environmental review process undertaken in this proposed action. We believe the environmental review was slipshod and does not meet the requirements of the National Environmental Policy Act or your agency's regulations implementing the requirements of that Act.

A. The local population, including the local unit of government, opposes the sludge ash facility.

FmHA regulations implementing the agency's environmental review program require that FmHA decisions meet the needs of rural communities. The sludge ash facility, however, is a proposal which foists upon an unwilling rural community a large, potentially hazardous industrial facility, whose purpose is to solve a problem of large urban areas by transferring that problem to a rural area. 7 CFR Part 1940 clearly indicates that FmHA's responsiblity is to meet rural needs and to do that in such a way that is consistent with the plans and wishes of local units of government (§1940.304).

As indicated by Exhibit A, the local, rural unit of government strongly opposes the sludge ash facility as proposed by Consolidated Management Corporation (CMC). Further, nearby ranchers intervened in the contested case hearing where the state's permit for CMC's operation was considered. The Environmental Assessment, contrary to your agency's requirements (§1940.318 and §1940.319), did not disclose this opposition to the public or the decisionmaker. In fact, the EA at Section XII appears to conceal the opposition of rural residents to the proposed facility by obfuscation or outright falsehood. First, the sale of the Unitram property is not common knowledge in the area. CMC's permit is for a different piece of land, not for the Unitram property. Second, objections to the CMC operation have been filed with the South Dakota Department of Natural Resources since the permitting hearings. These objections include allegations of permit violations (see B. below), which include use of some portions of the Unitram property not covered under the permit. In this letter, we also allege violations of FmHA's regulations governing environmental review (see C. below).

B. CMC is violating the Resource Recovery Permit issued by the State of South Dakota.

On March 31 the Technical Information Project and Ruth Kern, a rancher located near the CMC site, filed a complaint with the DWNR alleging that CMC/Celar was violating their resource recovery permit (see Exhibit B). As of April 25, DWNR had not responded to the charges formally. However, it is clear that DWNR will do very little to enforce the permit conditions. If this is the case, you should reflect in the EA the potential consequences of the state not enforcing its permit conditions. For instance, would FmHA be liable if a worker was killed because remnant explosives were detonated? Would FmHA be held responsibe if hazardous wastes were brought to the site and some contamination resulted? Your mitigation meauures should provide for enforceable restrictions on the facility and its operations and a mechanism to ensure that mitigation measures are enforced.

C. CMC is violating FmHA's requirement that prospective applicants not take actions with respect to proposed undertakings subject to the application.

CMC has violated and continues to violate the FmHA's requirement that prospective applicants not undertake actions with respect to the proposed undertakings which are the subject of the application (see §1940.309). CMC is using the Unitram property to unload, and perhaps to store, sludge ash as they have proposed in the application to FmHA. We ask FmHA to investigate these illegal activities and to cite CMC for their violations of FmHA environmental regulation.

D. The EA does not adequately assess cumulative impacts of the proposed sludge ash facility.

The EA fails to address the cumulative impacts of the proposed facility, especially the impact of a larger-scale operation taking in hazardous ash. The EA indicates (Section II) that waste streams other than the ash from the Metropolitan Waste Control Commission piles in St. Paul could be transported to the site. Section XIII indicates that additional or expanded facilities and projects could result from the present action. In fact, the present action will assure that expanded facilities/projects will occur. As a result, the EA should analyse the total project, including importation of wastes from other waste streams, including wastes from other large metropolitan areas, wastes from utilities, and wastes from manufacturers. Will these wastes be non-hazardous? The EA should describe the various wastes that may be processed at the facility, what additional facilities might be established, what the ultimate scale of the facility might reach, etc.

E. Indirect impacts have not been analysed in the EA.

The EA fails to address indirect impacts of the sludge ash operation. Some of the indirect impacts include transport of ash acrocs rural areas. You do not mention the potential for transportation accidents, cleanup of spills of ash along transport routes, etc. You should also consider the final disposition of the leached ash--will the ash be leached of all hazardous metals or just gold and silver as indicated in CMC's project description? The ash, once processed, may be more hazardous than when it goes into the process. You have not determined that the end product of the ash leaching will be useable for any use. In fact you indicate the proposed method "shows promise" (section I), and is "experimental" (Section II). You have not analysed the processing of the metals recovered from the ash leaching process.

F. For an "experimental" process with a potential to be used in the future, the federal agency should conduct a full-scale EIS.

As indicated in the EA the process and facilities to be used in the sludge ash facility are experimental. Although similar processes and facilities have been used in mine leaching operations, no one has applied this technology to sludge ash or other waste ashes (Exhibit C). The FmHA should develop an EIS to analyse all impacts and ramifications of the ash leaching process and facility.

G. The EA does not contain any indication that the MWCC ash is non-hazardous.

The EA states that the ash from MWCC facilities is "non-hazardous." However, there is no laboratory analysis in the EA or exhibits which indicates that the ash is non-hazardous under federal definitions. We request that an analysis of the waste on site at the Igloo property be conducted to determine whether the ash is hazardous,

H. The EA misrepresents the nature of the chemical thiourea.

The EA (Section IV-2) describes thiourea as "bio-degradable, non-toxic and odorless." However, the U. S. Environmental Protection Agency has listed thiourea as a hazardous waste under the Resource Conservation and Recovery Act (RCRA). Further, use of thiourea in the processing of ash will require addition of large amounts of acids. This may affect the toxic properties of thiourea further. The EA should provide much greater detail on the technical process, including measures to assure that the thiourea (and other toxic chemicals) do not reach the environment.

I. The EA fails to address air quality issues adequately.

The EA (Section IV-1) fails to indicate that the ash is being transported via truck from the unloading area on Uritram property and is creating an air pollution problem at the site. The ash is very fine, powdery, and light when broken up in the unloading area. The ash, containing hazardous constituents, is breathed in by workers, who, for the most part, are not wearing masks. Ash dust is carried by wind for some distance from the unloading facility and from trucks, even though the trucks are covered.

J. The EA fails to consider the importance of maintaining the Provo wel for domestic use purposes.

The EA (Section IV-2) fails to adequately describe what impacts the use of 25,000 gallons of water per day would have on the ability of the well to supply the Town of Provo and other ranchers who have tapped that well for domestic water.

K. The EA fails to consider what impact a serious leak or spill might have on the groundwater resource at Igloo and fails to consider mitigation measures to protect against groundwater contamination.

The EA does not address the event of an accident or leak which might lead to contamination of the shallow groundwater in the region. Geologic studies in the Provo area, conducted as a result of Chem-Nuclear Systems, Inc.'s proposed low-level radioactive waste facility at the same site, indicate a complex and interconnected shallow aquifer system that may supply outlying springs. These springs are used by area ranchers as a source of livestock water. The EA should address the potential for contamination of shallow groundwater by leaks or spills at the site. Such a study would require extensive geologic investigation and an EIS, Mitigation measures should be developed to minimize the risk of contamination of shallow ground water. Such measures should include use of leak detection systems as well as double-lined storage areas for ash.

L. The EA fails to describe the final disposal of spent ash.

The EA states (SectionIV-3): "It appears that the real challenge of this proposal will be the innovative disposal of the spent ash after the metals have been recovered. There appears to be adequate safeguards to insure that this material is disposed of in an environmentally safe manner." However, the EA fails to describe how the spent ash will be disposed. An EIS should be written to describe alternative disposal methods for the spent ash.

M. The EA fails to consider significant land use issues.

The EA states that the Unitram property would be used for ash storage, utilizing existing buildings. However, CMC does not have a permit fromthe state to cover the Unitram property and any such use would violate South Dakota's Solid Waste Law. CMC's permit covers only the land adjacent to the Unitram property. Also, the EA incorrectly states that the site has been "more-or-less idle" since WWII. A number of uses have been made of the site since WWII. Also, the EA fails to disclose that the US Army designated several areas of the Black Hills Army Depot as "Hazardous and Contaminated" with no surface use (in some cases, no sub-surface use) allowed. The FmHA should determine if the Unitram property is one such area.

N. The EA fails to disclose that ash is being transported by truck to storage areas.

The EA fails to disclose that the ash, after being unloaded from train cars, is transported by truck to storage buildings. CMC has been attempting to get county help in restoring a bridge on the site to accomodate its truck and other traffic. The truck traffic is causing air pollution from blowing ash.

O. The EA fails to adequately consider impacts to the black-footed ferret, a federally endangered species.

The EA indicates that there has been no coordination with the Fish & Wildlife Service concerning federally endangered species, particularly the Black-footed ferret. In past years confirmed sightings of black-footed ferrets have been made in the area surrounding the proposed facility. The FmHA should coordinate with the Fish & Wildlife Service to determine potential impacts of the project on this endangered species.

P. Alternatives to the proposed action are inadequately considered.

The EA fails to address alternatives to the proposed action in any but a superficial way. You fail to analyze whether processing of the ash on-site where it is stored would be environmentally preferable to shipping ash across the country to the Igloo facility, even though you indicate that future projects "would more likely be located elsewhere" (Section XIII). FmHA fails to consider alternatives from the point of view of environment and instead considers alternatives only from the point of view of the company's managemgnt perspective. This is not what the National Environmental Policy Act envisions as an adequate consideration of alternatives. Similarly , there is no real consideration of alternative project design or operation that could lessen environmental risk or impact. The statement that "no action was not considered" (Section XV-4) indicates a direct violation of NEPA has occurred in this environmental review.

Q. Consolidated Management Corporation has not provided FmHA with correct and honest answers to allow you to complete the EA.

CMC's letter of March 18 responding to your request for background environmental information misrepresents their project and its impact. In particular they have not provided an adequate map of the facility nor a legal description of the Unitram property; CMC has not disclosed their use of truck transport to storage areas and the air pollution resulting from that; CMC has failed to disclose what will become of the spent ash and removed metals (other than gold and silver); CMC failed to contact Fish and Wildlife Service concerning threatened or endangered species; CMC downplayed the sharp negative response to their project from neighboring ranches and residents; CMC failed to state any mitigation of environmental impacts; CMC told you they had a permit for the Unitram property when they do not; and CMC provided you with no data concerning the hazardous nature of their sludge ash.

R. CMC's sludge ash facility is controversial.

The sludge ash facility proposed by CMC is controversial. Area residents are firmly opposed to the plant. Ranchers and the local unit of government intervened to oppose granting of the permit by the state. The sludge ash plant is being forced on the local community by the same people who tried to force Chem-Nuclear's low-level radioactive waste dump on their community. We need not tell you of the 4-year controversy over nuclear waste in this state, culminating in a statewide vote against a compact that would have made the very same Igloo property a nuclear waste dump. This proposal, coming on the heels of that controversy, has made area residents furious, particularly at state and federal bureaucrats who can't seem to understand that the Igloo-Provo area is not Edgemont. Radio and newspapers are covering the controversy (see Exhibit D).

S. The sludge ash facility and your action would have significant impact on the environment.

The impacts of the sludge ash facility are significant to the area environment. Air, water, and soil all have the potential to be impacted by what you call "an experimental" project. Disposal of spent ash would present a problem. Storage of ash on-site at the Igloo property may cause groundwater pollution. The operation of the "experimental" facility may not be as described. Without an Environmental Impact Statement, the full impacts of the sludge ash facility can not be determined and mitigation measures proposed. An environmental assessment is not adequate in this instance. Your action to concur in the sale of the former Unitram property would allow CMC to operate its sludge ash facility without the benefit of the conditions placed on the state permit, because the Unitram property is not covered by the state permit. The EA did not adequately describe the project and did not disclose this to the decisionmaker. An Environmental Impact Statement is needed to assure that all ramifications of the sludge ash facility are covered.

For the above reasons, the Technical Information Project objects to the Finding of No Significant Impact issued with respect to concurrence in sale of the Unitram property for ultimate use as a sludge ash facility. We hold that the EA is woefully deficient, that environmental impacts are significant, that the sludge ash project is controversial, and that mitigation measures are not adequate to assure that the environment will be protected. Further, we hold that FmHA must consider its role to meet the needs of rural communities. Therefore, we ask the FmHA to: (1) not concur in the sale of the Unitram property, (2) withdraw the Finding of No Significant Impact and begin the Environmental Impact Statement process, and (3) immediately schedule a public hearing to take public testimony concerning the proposed sludge ash facility.

Sincerely,

Donald Pay

PS. Please inform me of your decision on this matter.

II

100TH CONGRESS
1ST SESSION

S. 1179

To amend the Consolidated Farm and Rural Development Act to improve the administration of Farmers Home Administration loans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 8, 1987

Mr. CONRAD introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To amend the Consolidated Farm and Rural Development Act to improve the administration of Farmers Home Administration loans, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FARMERS HOME ADMINISTRATION.

The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended—

(1) in section 331(d) (7 U.S.C. 1981(d)) by striking out "The Secretary" and inserting in lieu thereof "Subject to section 331D, the Secretary"; and

(2) by inserting after section 331C (7 U.S.C. 1981C) the following new section:

"SEC. 331D. DEBT SETTLEMENT.

"(a) SETTLEMENT DETERMINATION.—

"(1) VALUE TO THE FEDERAL GOVERNMENT.— In determining whether to take action under subsection (d) of section 331 (hereinafter in this section referred to as 'settlement') the Secretary shall calculate the value that the Federal government would expect to realize through liquidation of property used to secure the loan or through a bankruptcy proceeding.

"(2) COSTS INCLUDED.—In determining the value to the Federal government under paragraph (1), the Secretary shall consider the costs of recovery, management, and disposition of the property used to secure the loan.

"(3) LIQUIDATION NOT REQUIRED.—The Secretary shall not require the liquidation of property securing a loan under this title as a condition of entering any settlement under section 331 if, through settlement, the Secretary will realize at least the value calculated under paragraph (1).

"(4) CONDITIONS OF SETTLEMENT.—The Secretary shall not require that the outstanding amount of a loan be due and payable, under the terms of the note or as a result of acceleration, as a condition of settlement under this section.

"(5) WRITING DOWN DEBT.—

"(A) AUTHORITY.—In any case in which a borrower is determined to be delinquent in the payment of principal or interest, or both, due on a loan, (including loans made by a Federal or State chartered bank, savings and loan association, cooperative lending agency, or other legally organized lending agency that has been guaranteed by the Secretary under this title), the Secretary shall write down the outstanding debt on the loan to the current market value, if the Federal government could expect to realize less than the amount of the outstanding debt through liquidation of the property used to secure the loan or through bankruptcy proceedings, as calculated under paragraph (1).

(B) POWERS OF SECRETARY.—The Secretary may pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Secretary in connection with loans made, including the power—

"(i) to negotiate a guaranteed loan with a lending institution to enable the Secretary to honor a portion of a guarantee and avoid foreclosure; and "(ii) to purchase a guaranteed loan in its entirety from a lending institution and thereby permit loan servicing by the Secretary under the authority of the Secretary.

"(b) LOAN SERVICING.—

"(1) DEFINITION.—As used in this section, the term 'loan servicing' includes all activities associated with the management, administration, foreclosure, or liquidation of a loan made under this title.

"(2) SETTLEMENT AUTHORITY.—Settlement authority under this section shall be considered to be a form of loan servicing in conjunction with the reamortization, rescheduling, consolidation, or deferral with limited interest rates of the loan, to the extent necessary for a borrower to repay the loan.

"(c) NOTICE.—The Secretary shall provide written notice of the provisions of this section, and any regulations promulgated under this section—

"(1) to any borrower who becomes delinquent on any loan made or insured under this title;

"(2) to any borrower who requests the notice; and

"(3) to any borrower who holds a loan that the Secretary intends to liquidate, accelerate, or foreclose on.

"(d) REVIEW OF DENIALS OF SETTLEMENT.—Denials of settlement or of loan servicing, or disputes over the terms and conditions of settlement or loan servicing under this section, are appealable pursuant to section 333B.".

SEC. 2. LOAN SERVICING ELIGIBILITY.

Section 331A of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981a) is amended—

(1) by inserting "(a)" after the section designation;

(2) in the first sentence—

(A) by inserting "or on the determination of the Secretary under this title" after "request of the borrower";

(B) by inserting "to carry out this title" after "deems necessary"; and

(C) by inserting "or a determination by the Secretary" after "upon a showing by the borrower";

(3) in the second sentence—

(A) by striking out "Secretary may permit"; and

(B) by striking out "to" and inserting in lieu thereof "shall"; and

(4) by adding at the end thereof the following new subsections:

"(b) The Secretary shall establish a period of deferral for a loan under this section that assists the borrower of the loan to maintain a current living standard, not to exceed the national median family income for a family of like size, and to reestablish the ability of the borrower to pay principal and interest on the loan.

"(c) When necessary to carry out the authority under this section, the Secretary may—

"(1) grant a deferral during a period beginning later than August 4, 1978; and

"(2) shall retroactively restructure the loans of the borrower during the period.

"(d) During any deferral period permitted under this section, the Secretary shall allow the borrower to upgrade, change, restore, or expand a farming or ranching operation in any manner reasonably necessary for the continuation or preservation of the operation.

"(e) The Secretary shall not consider extremely high production costs of the past or unusually low yields caused by circumstances beyond the control of the borrower, when projecting future repayment ability of the borrower, to determine eligibility for deferral under this section or any other loan servicing (as defined in subsection (b) of section 331D) authorized by this title.

SEC. 3. LOAN SERVICING REFORM.

Subtitle D of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981 et seq.) (as amended by section 1 of this Act) is amended by inserting after section 331D the following new section:

"SEC. 331E. LOAN SERVICING.

"(a) NOTICE.—

"(1) TYPE.—The Secretary shall provide to each borrower or applicant for a loan made or insured under this title, written notice describing all loan servicing alternatives that the Secretary is authorized to provide under this title, and the means by which a borrower or applicant may apply for each alternative.

"(2) CONTENTS.—The notice required under this section shall describe deferral, rescheduling, reammortization, consolidation, limited resource rates, debt settlement, and any other loan servicing alternatives available under this title.

"(3) WHEN REQUIRED.—The notice required under this section shall be provided—

"(A) at the time an application is made for services under this title;

"(B) any time a borrower becomes delinquent on payment of principal or interest;

"(C) any time a borrower advises the Secretary that the borrower is experiencing financial difficulty;

"(D) any time a natural disaster is declared in the county of, or any county adjacent to, the borrowers residence or place of farming or ranching;

"(E) any time any other creditor of the borrower advises the Secretary that the borrower is delinquent on payments owing to the creditor; and

"(F) in November of each year.

"(b) CONSIDERATION FOR LOAN SERVICING.—The Secretary shall consider any borrower or applicant for all loan servicing alternatives under this title if the borrower or applicant—

"(1) requests consideration by the Secretary;

"(2) becomes delinquent on payment of interest or principal on any loan made or insured under this title; or

"(3) prior to initiation of liquidation, requests acceleration, repossession, foreclosure, or any other such collection activity for the conveyance of security property.".

SEC. 4. COUNTY COMMITTEES.

Section 332(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1982(a)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) in the second sentence, by striking out "deriving the principal part of their income from farming";

(3) by inserting before the period at the end of subsection (a) the following: "prior to conducting any county committee election. The Secretary shall publish any regulation promulgated under this subsection, and complete elections consistent with this section."; and

(4) by adding at the end thereof the following new paragraphs:

"(2) A borrower of a loan made or insured under this title, or a member of the borrower's family, shall be eligible to serve as an elected or appointed county committee member, subject to the conflict of interest limitations contained in section 336.

"(3) The Secretary shall assure that farmers have

"(A) at least 45 days to submit nominations following the general public notice of any procedure by which to submit nominations for county committee elections in each county; and

"(B) at least 30 days, following the general public notice of an election in each county, before an election is held

"(4) For purposes of this subsection, the term 'farmer' shall include the spouse of a farmer otherwise eligible under this section.".

SEC. 5. APPEALS PROCEDURE.

Section 333B(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b(a)) is amended—

(1) by inserting "(1)" after the subsection designation;

(2) by inserting "on the record" after "hearing"; and

(3) by adding at the end thereof the following new paragraphs:

"(2) Borrower and lender applicants who otherwise satisfy the requirements of this subsection shall each be entitled to the same notice, meeting, and hearing options provided in paragraph (1), without respect to the participation of the other applicant.

"(3) The Secretary shall—

"(A) appoint hearing officers under the authority of section 3105 of title 5, United States Code, to preside at any hearing required by this section; and

"(B) conduct such hearings in accordance with sections 556 and 557 of such title.".

SEC. 6. COMPLIANCE WITH STATE LAW.

Subtitle D of the Consolidated Farm and Rural Development Act is amended by inserting after section 333B (7 U.S.C. 1981 et seq.) the following new sections:

"SEC. 333C. STATE SPONSORED DISPUTE RESOLUTION.

"The Secretary shall participate in any program of credit dispute resolution required under State law as a condition of the initiation of any collection activity under this title.

"SEC. 333D. REDEMPTION OF REAL PROPERTY.

"(a) PERIOD FOR REDEMPTION.—The Secretary shall allow redemption by the borrower of real property that has been used to secure any loan made to the borrower under this title and which has been foreclosed, purchased, redeemed, or otherwise acquired by the Secretary through any foreclosure procedure, during the greater of 1 year from the date of judgment or any period prescribed under State law.

"(b) TERMS AND CONDITIONS.—Any redemption under subsection (a) shall be on such terms and conditions as required under State law, or if there be none, on reasonable terms and conditions established in regulations promulgated by the Secretary.

"(c) BORROWER PREFERENCE.—The Secretary shall give the following persons preference in the purchase of property that has been foreclosed, purchased, redeemed, or otherwise acquired by the Secretary through any foreclosure procedure, in the following order:

"(1) The person from whom the Secretary acquired the property.

"(2) The immediate family of the person referred to in paragraph (1).

"(3) In the event that the person from whom the Secretary acquired the property is a native American of a recognized tribe, other members of the same tribe, or a tribal corporation or partnership of members of the same tribe.".

SEC. 7. FARM LEASEBACK PROGRAM.

Section 335(e) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1985(e)) is amended—

(1) in paragraph (1), by striking out "in the following order of priority" and inserting in lieu thereof "to the following";

(2) in paragraph (3)—

(A) by striking out "special consideration to" in subparagraph (C) and inserting in lieu thereof "the right of first refusal"; and

(B) by inserting "a previous owner or operator or other" after "preference to" in subparagraph (D); and

(C) by adding at the end thereof the following new subparagraph:

"(E) The Secretary may sign contracts to provide for the lease of land to the owner before the Secretary actually acquires that land.";

(3) in paragraph (6)—

(A) by striking out "and" after the semicolon at the end of subparagraph (A);

(B) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new subparagraph:

"(C) provide written notice of the availability of such farmland the immediate any previous owner of such land."; and

(4) by adding at the end thereof the following new paragraph:

"(9) Denials of applications for or disputes over terms and conditions of a lease or purchase agreement under this section are appealable under section 333B.".

SEC. 8. INCOME RELEASE.

(a) RELEASE OF OPERATING EXPENSES.—Section 335(f) of the Consolidated Farm and Rural Development Act

(7 U.S.C. 1985(f)) is amended by striking out subsection (f) and inserting in lieu thereof the following new subsections:

"(f) The Secretary shall release from the sale of security provided for any loan under this title, or from any other property, income, or payments that (but for the action of the Secretary) would be received by the borrower, an amount sufficient—

"(1) to assure a reasonable standard of living for the borrower and the borrower's family; and

"(2) to pay all necessary farm operating expenses.

"(g) The Secretary shall issue regulations consistent with this section that assure the release of funds to each borrower, and that establish guidelines for release, including a list of expenditures for which funds will normally be released.

"(h) If a borrower is required to plan for or report on how proceeds from the sale of collateral property will be used, the Secretary shall—

"(1) notify the borrower under this title; and

"(2) advise the borrower of the right to the release of funds under this section and the means by which a request for the funds may be made.

"(i) A denial of a release of security property is appealable under section 333B.".

(b) IMPLEMENTATION.—The amendments made by subsection (a) shall be implemented not later than 90 days after the date of enactment of this Act.

SEC. 9. HOMESTEAD PROTECTION.

Section 352 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000) is amended—

(1) in subsection (a)(3), by inserting ", including a reasonable number of farm outbuildings located on the adjoining property" before the period;

(2) by striking out paragraph (1) of subsection (b) and inserting in lieu thereof the following new paragraph:

"(1) The Secretary or Administrator may, on application by the borrower, permit a borrower to retain possession and occupancy of the homestead property if—

"(A) the Secretary holds in inventory or intends to foreclose on a mortgage on property securing a loan made or insured under this title;

"(B) the Administrator holds in inventory or intends to foreclose on a mortgage on property securing a farm program loan made under the Small Business Act (15 U.S.C. 631 et seq.); or

"(C) a borrower of a loan made or insured by either agency files bankruptcy or agrees to voluntarily liquidate or convey such property in whole or in part.";

(3) by striking out subsection (c) and inserting in lieu thereof the following new subsection:

"(c) To be eligible to occupy homestead property, a borrower of a loan made or issued by the Secretary, or Administrator must meet all of the following conditions:

"(1) The borrower must have made gross annual farm sales reasonably commensurate with the size and location of the farming unit, and local conditions of the agricultural community, including natural and economic conditions, in at least 2 years during the 5 year period beginning on January 1, 1981, and ending on December 31, 1986 (or the equivalent crop or fiscal years). For purposes of this paragraph, 'gross annual farm sales' shall include rent received from agricultural land during the applicable period of time the borrower has been unable to continue actively farming the land, due to circumstance beyond the control of the borrower.

"(2) The borrower must have received, from farming operations, at least 60 percent of the gross annual income of the borrower and any spouse of the borrower, during at least 2 years of the 5-year period unless, due to circumstances beyond the borrowers control, including a decline in farm income due to a fall in agricultural commodity prices, the borrower has been unable to continue to pay operating expenses, including farm debt, and support a family without off-farm income. For purposes of this paragraph, 'farming operations' shall include rent received from agricultural land if the borrower has been unable to continue actively farming the land, due to circumstance beyond the control of the borrower.

"(3) The borrower must have occupied the homestead property, and engaged in farming or ranching operations on adjoining land, or other land controlled by said borrower, during the 5-year period. Notwithstanding the preceding sentence, any borrower that, due to circumstances beyond the control of the borrower, has not engaged in farming or ranching operations during the 5-year period, but otherwise satisfies the requirements of this section, shall be considered to have satisfied this paragraph.

"(4) The borrower must, during the period of occupancy of the homestead property, pay a reasonable sum as rent for such property to the Secretary or the Administrator in an amount, and at terms substantially equivalent to rents charged for similar residential properties in the area in which the homestead property is located, and failure to make rental payments in a timely fashion shall constitute cause for the termination of all rights of a borrower to possession and occupancy of the homestead property under this subsection. In effecting a termination under this paragraph, the Secretary shall provide the borrower or lessee the notice and hearing rights under section 333B, and shall comply with all applicable State and local laws governing eviction from residential property.

"(5) The borrower must during the period of occupancy of homestead property, maintain such property in good condition.

"(6) The borrower must agree to such other terms and conditions not inconsistent with this section as are prescribed by the Secretary or the Administrator in order to facilitate the administration of this subsection.".

(4) in subsection (d), by adding at the end thereof the following new sentence: "The terms and conditions shall be no less favorable than those intended to be offered to any other buyer."; and

(5) by adding at the end thereof the following new subsection:

"(f) Denials or disputes over the terms or conditions of retention of homestead property are appealable under section 333B.".

SEC. 10. STATE POLICY BOARDS.

The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 353. STATE POLICY BOARDS.

"(a) ESTABLISHMENT.—There is established in each State a State Farmers Home Administration Policy Board (hereinafter in this section referred to as the "board") under the authority of the Governor of that State.

"(b) FUNCTIONS.—A board shall—

"(1) review and report to the Secretary, the Governor, and the public on State impact on Federal policies of the Farmers Home administration; and

"(2) determine the amounts of direct and guaranteed real estate and operating loans that are needed for the State under this title.

"(c) LOCATION.—A board shall be located in, and use the State offices of the Farmers Home Administration.

"(d) MEMBERSHIP.—

"(1) ELECTION.—The board shall consist of five members that need not be actively engaged in farming, to be elected by the members of the local county committees established under this title.

"(2) TERM OF SERVICE.—

"(A) INITIAL YEAR.—Of the original members elected to serve on the board, two shall serve a 2-year term, and three shall serve a 3-year term, as determined by the Governor.

"(B) SUBSEQUENT YEARS.—On expiration of the term of a 2-year member, the county committees shall elect a replacement member as prescribed in subparagraph (A) for a 3-year term. On expiration of the term of a 3-year member, the county committees shall elect a replacement member as prescribed in subsection (A) for a 2-year term.

"(3) VACANCIES.—A vacancy on the board shall be filled in the manner in which the original election was made and in accordance with the terms prescribed in paragraph (2).

"(e) MEETINGS.—The board shall meet at least once each quarter at the call of a majority of its members.

"(f) COMPENSATION, EXPENSES, PERSONNEL, AND SERVICES.—

"(1) COMPENSATION.—All members of the board shall be compensated at a rate equal to that received by members of State committees established under section 8(g) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(g)).

"(2) EXPENSES.—All members of the board shall be reimbursed for travel, subsistence, and other necessary expenses incurred by the members in the performance of their duties.

"(3) PERSONNEL AND SERVICES.—

"(A) STATE FMHA OFFICE.—The board shall have the authority to use the personnel, services, and equipment of the State office of the Farmers Home Administration as the Secretary considers necessary.

"(B) DEPARTMENT OF AGRICULTURE.—The Secretary shall provide the board with any reports or information that the board requests in the performance of the functions of the board.

"(g) HEARINGS.—The board may, for the purpose of carrying out this section, hold such hearings, and sit and act at such times and places, as the board considers appropriate.

"(h) BOARD REPORTS.—The board shall provide the Secretary and the public with a quarterly report on—

"(1) the activities of the board;

"(2) the anticipated credit needs of the State; and

"(3) State input, and the effect of that input, on Federal policies of the Farmers Home Administration.".

The following transcript is the result of a hearing held by Senator Conrad in New Town, North Dakata, which highlights the special problems facing Indian farmers as FmHA borrowers. It is made a part of the record.

A FACT FINDING FORUM ON INDIAN AGRICULTURE

Agriculture Committee
United States Senate

BEFORE THE HONORABLE KENT CONRAD
United States Senator

Taken At
Civic Center
New Town, North Dakota
Tuesday, September 1, 1987

[Appearances as Noted herein]

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APPEARANCES

TRIBAL COUNCIL PANEL:	Mr. Edward Lone Fight Chairman, Fort Berthold Indian Reservation Mr. Wayne Ducheneaux Chairman, Cheyenne River Sioux Tribe Eagle Butte, South Dakota
FARMER/RANCHER PANEL:	Mr. Dennis Huber Mr. Kenneth J. Fredericks, Sr. Mr. Clement Baker
FARMERS HOME ADMINISTRATION PANEL:	Mr. Lorace Hakanson New Town, North Dakota Mr. Ralph Leet State Director, FmHA Mr. Odell Ottmar Chief, Reservation Program Bismarck, FmHA
BUREAU OF INDIAN AFFAIRS PANEL:	Mr. Bill Collier Assistant Area Director Aberdeen Office Dr. Alonzo Spang Superintendent, BIA Fort Berthold Agency New Town, North Dakota Mr. Reginald Arnold Finance Office, Loan Specialist Washington, D.C. Ms. Alsace LaFramboise Aberdeen Area Office Loan Specialist
ALSO PRESENT:	Mr. Raymond Cross Three Affiliated Tribes Counsel Ms. Diane Johnson Cheyenne River Sioux Tribe Legal Counsel

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Exhibits

No.	Description
1	Written Statement of Edward Lone Fight
2	Written Statement of Wayne Ducheneaux
3	Written Statement of Dennis Huber
4	Written Statement of Kenneth J. Fredericks, Sr.
5	Written Statement of Pete Fredericks
6	Questions Submitted to FmHA, with attached answers
7	Questions Submitted to BIA
8	Written Statement of Ralph H. Leet, State Director, FmHA
9	Letter dated August 31, 1987, to Senator Conrad from Melvin J. Rousseau, Acting Area Director, BIA, with attachment
10	Document consisting of 5 pages, entitled "Bill"

[The Fact Finding Forum on Indian Agriculture of the Senate Agriculture Committee commenced before The Honorable Kent Conrad, United States Senator, presiding, Tuesday, September 1, 1987, commencing at 4:15 p.m., at the Civic Center, New Town, North Dakota.]

SENATOR CONRAD: This hearing of the Senate Agriculture Committee will come to order.

Let me indicate that while we are here in New Town, that we will be operating under the rules of the Senate Agriculture Committee. This is an official hearing of the Senate Agriculture Committee; and, as such, the testimony presented here today will become part of the official record of the Agriculture Committee. And, based upon testimony and evidence provided here today, this evidence and testimony will be used to form part of the decisions of the Federal Government on reform of farm credit system and reform of FmHA, as well as providing background to the Senate Agriculture Committee.

Let me thank all those who have come here today. As you know, the hearing has been arranged so that we will hear first from the Tribal Chairman, Mr. Edward Lone Fight, and Mr. Wayne Ducheneaux -- am I pronouncing that correctly?

MR. WAYNE DUCHENEAUX: Yes.

SENATOR CONRAD: That's so nice. I have been mispronouncing names today, so I'm glad to have that one correct. Then we are going to hear from three ranchers who have specific experiences to relate: Mr. Dennis Huber, Mr. Ken Fredericks, and Mr. Clement Baker.

Are those gentlemen all here?

[Affirmative responses, "Here."]

SENATOR CONRAD: Thank you very much. We also have here -- and I want to welcome them to the meeting -- Mr. Ralph Leet, who is the State Director of FmHa; with him, Mr. Hakanson and Mr. Ottmar. Again, welcome, and thank you for attending.

In addition, we have representatives of the BIA: Dr. Spang, Mr. Collier, Mr. Arnold and Ms. Framboise. Is that correct?

MS. LA FRAMBOISE: LaFramboise.

SENATOR CONRAD: Well, I am continuing my pattern of mispronounciation. Now I'm glad I have that right.

We are under a tight time schedule, so we want to move expeditiously. And I want to first invite Mr. Lone Fight, and Mr. Ducheneaux, to proceed with their statements. I want them to know that the full statement that they have prepared will be entered into the record, and they are free at this point to summarize their statements. And then we'll move to the farm panel, get their specific stories, and then we'll proceed to hear from Mr. Leet and the FmHA representatives. And with that, perhaps we could proceed with Mr. Lone Fight.

MR. EDWARD LONE FIGHT: Thank you, Senator.

I am with our tribal attorney, Raymond Cross, and we are providing testimony. My name, as was mentioned, is Edward Lone Fight, and I am the Chairman of the Three Affiliated Tribes. I want to welcome you to the Fort Berthold Reservation, and to thank you for convening this fact finding forum regarding the Indian agricultural debt credit crisis and its potentially devastating impact on Indian agriculture nationwide.

The Three Affiliated Tribes share your deep concern about the potential loss through foreclosure, or by voluntary liquidation, of thousands of acres of reservation lands used by tribal members as collateral for obtaining FmHA farm loans.

A March, 1987, GAO report confirms that absent Congressional intervention, the Great Plains Tribes' worst fears are soon likely to be realized. That report found that 351,166 acres of Indian lands are pledged by 370 tribal borrowers as security for FmHA farm loans. These 370 borrowers owe $49 million in principal and interest to FmHA. The GAO Report estimates that 39 percent, or 144 of the borrowers, are either in the foreclosure or liquidation process, or are likely to be foreclosed or liquidated soon. This is, as the GAO staff confirmed, a conservative estimate, and the real numbers could be considerably higher.

Mr. Senator, this means that across the 14 Great Plains agricultural reservations studied in the GAO report, thousands of acres of trust agricultural lands will be lost. The predictable result is that the general assistance rolls on these reservations will swell as the direct, and secondary, economic impacts hit the tribal population that is dependent on agriculture for their livelihood. Already strapped tribal economies will be further undermined and tribal members will sink even deeper in the abyss of dependency on the Bureau of Indian Affairs for welfare handouts, rather than jobs.

The GAO report also shows that the two most vulnerable reservations are the Fort Berthold Reservation and the Cheyenne River Reservation in South Dakota. That report indicates that 25,509 acres out of 43,383 pledged trust acres, are likely to be lost to FmHA action on Fort Berthold. That report also indicates that 33,996 acres out of 50,543 pledged trust acres are likely to be lost to FmHA action on Cheyenne River.

The GAO report further shows the vulnerability of the agricultural tribes' tribal economies, which are not economically diversified, to these economic shocks. A severe economic dislocation, fed by inflation, depressed agricultural and livestock markets, and tight credit, has affected American agriculture generally. However, its effects are greatly magnified on the Indian reservations. State-wide, in North Dakota, about 10 percent of the non-Indian borrowers are delinquent on their loans with FmHA. By comparison, the GAO report shows that 39 percent of the tribal borrowers, four times the non-Indian rate, are delinquent on their loans with FmHA.

The reasons for the vulnerability of Indian agriculture are not hard to find. The geographic and cultural isolation of the Indian reservations, coupled with severe juridictional conflicts, has effectively closed the private capital markets to the tribal people. This economic vulnerability is heightened by the fact that the federal government took the Great Plains Tribes' most valuable lands -- farm lands -- as settlement areas for non-Indians, and left the tribes with only grasslands as the potential source of economic self-sufficiency. Last, but not least, the agricultural tribes, and their members, have struggled to carry out the treaty agricultural purposes of their reservations with virtually no technical assistance or guidance from the federal government.

Now in the eighties of the Twentieth Century, the Great Plains Tribes, especially Fort Berthold and Cheyenne River, once again face the loss of thousands of acres of trust lands to non-Indians. Mr. Senator, we are here today to ask your help in avoiding this result. The Tribes' problems are modest, when compared to the massive farm debt crisis nationwide, but unless there is a focused legislative solution tailored to the needs of the Tribal farmers and ranchers, this crisis will likely leave Indian agriculture permanently crippled.

We believe there is one overriding factual cause that distinguishes this crisis in Indian agrculture: That is the complete failure of the federal trust responsibility mechanism to protect the Indians' most important asset: their trust agricultural lands.

The Tribes' modest legislative proposal, set forth below, recognizes that there is a unique federal trust responsibility owed to tribal farmers and ranchers. This proposed legislation will help preserve a nucleus of tribal farmers and ranchers who are good managers of their family farms and ranches. It also provides for meaningful tribal participation, consistent with the principle of Indian self-determination, in the allocation of credit resources in Indian agriculture.

These legislative recommendations contemplate the following elements.

Point One: Transfer of Indian Debt to BIA from FmHA for Debt Restructuring Purposes.

The Three Affiliated Tribes recommend, because of the federal trust status of the pledged lands and the tribal borrowers, that the accumulated delinquent Indian debt of approximately $23 million should be transferred from FmHA to BIA. FmHA has told us it recognizes no trust responsibility that it owes to either the pledged Indian lands or to the Indian borrowers. By contrast, BIA, as the trustee of both the Indian people and their lands, has the authority and responsibility to make direct loan funds, and technical assistance programs, available to qualified Indian debtors who would benefit from debt restructuring. We estimate, based on GAO's figures, that some 190 Indian borrowers nation-wide are presently delinquent on their FmHA farm loans. We further estimate, based on FmHA projections, that some 100 Indian borrowers may benefit from debt restructuring if their debt were written down to fair market value, and then refinanced through the proposed BIA program.

This modest program, administered by the BIA, would provide a targeted nucleus of Indian farmers and ranchers the second chance they deserve. BIA, unlike FmHA, has a direct trust relationship with both the borrowers and their pledged assets. BIA, as the long term real estate managers for tribal and allotted lands, can provide direct assistance to the restructured debtor in relation to grazing fees, the redesign of economic grazing units and other help in making their lands more manageable and productive. This the FmHA cannot do.

Further, the BIA would be obligated, under this proposed legislation, to apply the same debt restructuring criteria as would be applicable by statute to non-Indian FmHA debtors.

However, the Tribes also recognize that some Indian borrowers may prefer to remain with FmHA for purposes of debt restructuring, or to otherwise discharge their obligations with FmHA. For that reason, the Tribes believe that the delinquent Indian debtors should be given the option, by notice, and by affirmative election, to have their debts and the mortgages of the pledged trust lands transferred to BIA.

Point two: Utilize Existing BIA Direct Loan Authority under the Indian Financing Act, 25 USC 1451, for the purpose of debt restructuring.

The BIA has the -- already has the authority under the Indian Financing Act to provide direct loans to Indian borrowers for agricultural purposes. The Tribes recommend that a $10 million dedicated fund be established under that authority, through supplemental appropriations, for the purpose of the restructuring and refinancing, of the delinquent debts of qualified Indian borrowers who own and manage family farms and ranches.

To be eligible, the Indian borrower's present debt to the federal government may not exceed $400,000 accumulated principal and interest. The Tribes estimate, based on FmHA projections, that approximately 100 Indian debtors may benefit from this program. The Tribes also estimate that the fair market value write down of the accumulated delinquent Indian debt of approximately $23 million is about $9 million.

Point Three: The Establishment of an Indian Agriculture Technical Assistance Fund be Administered by BIA.

The Tribes believe, as stated before, that the past lack of technical assistance to the tribal farmers and ranchers has significantly contributed to the present agricultural crisis on the reservations. Consequently, the Tribes recommend that a special pilot program, funded at $5 million a year, for technical assistance to Indian Agriculture be established for three years. This limited technical assistance program is intended to provide an incubation period for selected, qualified tribal farmers and ranchers on the reservations. This pilot program, under the authority of the Indian Financing Act, would allow the BIA to provide direct loans or grants, not to exceed $200,000 in start-up funding to new tribal farmers.

That program, as its first priority, would be aimed at new tribal farmers and ranchers who have not previously received BIA or FmHA loans for agricultural purposes. The BIA would be required to provide direct training and managerial assistance to these borrowers. This would include a mandatory training program and agricultural education for eligible tribal borrowers. The tribal farmers and ranchers would be eligible for tribal borrowers, for a living stipend, not to exceed $300 a month, while they attended such training and education programs sponsored by the BIA for up to 24 months. Such training and education programs, as are needed to qualify the new tribal managers, may be provided by the tribal community colleges by contract with the Bureau of Indian Affairs. The BIA would be required to consult with the Indian agricultural Tribes to ensure that programs tailored to their special needs are available.

Further, tribal farmers and ranchers who have been in business for less than 15 years would be eligible, as a second priority, for this program provided that any loan delinquency they may have with a BIA or FmHA administered farm loan program has been cured before their participation in the program is allowed.

Point Four: Foreclosed or Liquidated Trust Land is to be Administered by the Secretary of the Interior on Constructive Trust for the Tribes Subject to the Redemption Right of the Following Indian Persons.

Further, the Tribes recognize that a substantial number of tribal farmers and ranchers will not be eligible for debt restructuring for a variety of reasons. Those trust lands pledged as security by those borrowers will be foreclosed, or liquidated, and the United States will acquire title to thousands of acres of trust lands. The Tribes recommend that the Tribe Secretary be directed to hold these lands on constructive trust, subject to a lien in favor of the United States, on behalf of the Tribes in whose reservation those lands are located. The Secretary would be responsible to lease those lands and would credit the revenues received to the reduction of the attached lien in the amount of the debt. However, the following specified persons would have the right to redeem the lands, within one year from the date of foreclosure or conveyance, by payment of the fair market value, or capitalized value, of those lands whichever is less: (a) the former Indian owner; (b) the tribal family members of the former Indian owner.

The affected tribe would have the option, if these redemption rights fail, to purchase those lands by the payment of the capitalized value of the lands, or the remaining lienhold value, whichever is less. In any event, after the federal liens on these lands are discharged, beneficial title shall be vested in the affected Tribes and the lands shall be held in trust by the United States on behalf of the affected Tribe.

Mr. Senator, this concludes my written testimony, and I would be happy to answer any questions that you may have. Thank you.

SENATOR CONRAD: Thank you. Mr. Ducheneaux, do you have a written statement as well?

MR. DUCHENEAUX: Yes.

SENATOR CONRAD: Why don't we proceed with your statement, and then we'll take a moment for questions before proceeding onto the next panel.

MR. WAYNE DUCHENEAUX: Thank you, Senator. My name is Wayne Ducheneaux. I am Chairman of the Cheyenne River Sioux Tribe of Eagle Butte, South Dakota. I would like to thank Chairman Lone Fight for having me as a guest on this Reservation.

I would like to say it is my honor to testify here today on the problems affecting Indian Agriculture throughout the nation; particularly, the Northern Great Plains. There are a few Indian tribes throughout the Northern Plains that have minerals and other natural resources. However, the majority of the income derived from reservation lands is from agriculture. It has been estimated that throughout the Northern Great Plains Indians derive 90 percent of their income from their agricultural lands.

Historically, Indian tribes have been asked to give up more and more of their land base to make way for the citizens of the United States. Although most of these land grabs occurred in the eighteen hundreds, the practice continues today in the form of such adverse action as forced liquidations, foreclosures, and voluntary liquidations. These such adverse actions, compounded by the complete failure of the Bureau of Indian Affairs' ability to administer trust lands, though these actions are not classified a land grab, the end result is the same.

More recently, Cheyenne River and Fort Berthold lost hundreds of thousands of acres of their Reservation land base to the mainstream dams on the Missouri River. Presently, under the Reagan Administration, farm foreclosures are at the highest level since the Great Depression of the 1930's. Indian tribes, like Cheyenne River and Fort Berthold, are faced with the real and present danger of losing still more thousands of acres of reservation land.

The GAO report mentioned by Mr. Lone Fight, published in March of 1987, indicates that approximately 34,000 acres of trust land are likely to be lost to the Farmers Home Administration on the Cheyenne River Sioux Reservation. The economy on Cheyenne River, like many of the Northern Indian Tribes, is predominately agriculturally based. The reservation economy is almost entirely predicated on farming and ranching. All of the land leased on the Cheyenne River Reservation is leased to tribal members. Therefore, the potential loss of approximately 34,000 acres of trust land would have devastating economical impacts both on the lives of individuals and on the Tribe. The loss of the Tribe's agricultural land base will result in the further escalation of the unemployment rate, with further dependency on general assistance. The Cheyenne River Sioux Tribe believes that the Bureau of Indian Affairs failed the Indian Tribes, which has left them in the crisis they are in today: facing the loss of their agricultural land base.

We realize that the Congress is undertaking a massive attempt to bail out the Nation's farmers and ranchers. In light of the efforts Congress is proposing, in order to save the Nation's farmers and ranchers, the requests made by the Indian tribes here today are miniscule. What the Indian tribes are proposing will stabilize the agricultural economies of the reservations.

Presently, 60 percent of the enrolled members of the Cheyenne River Sioux Tribe live on the reservation. According to our own studies and statistics, the unemployment rate on the Cheyenne River Reservation is about 85 percent. This, in and of itself, is a crippling and devastating factor. The University of South Dakota published a population update in March of 1987. This study indicates that the Indian population on Cheyenne River, encompassing two counties, is 83.7 percent. This same study states that Ziebach County, one of the counties on Cheyenne River, ranks as one of the poorest counties in the Nation, with the lowest per capita income in the country.

The unemployment rates and poverty levels on Indian reservations are enormous and bleak. However, if Indian Tribes are yet faced with the further loss of their land base, we may not survive, along with the rest of the nation's farmers and ranchers, if Congress is not willing to assist the Indian Tribes.

Senator Conrad, the Cheyenne River Sioux Tribe of the Cheyenne River Reservation and the Three Affiliated Tribes of the Fort Berthold Reservation are seeking your support of the following proposed legislative language. The proposal is:

A: Where the secretary has acquired, or shall hereafter acquire, any land pursuant to this Chapter 50, Title 7, United States Code, within the exterior boundaries of any Indian reservation, such land shall be administered as provided in this Section.

B: The secretary shall, within 180 days after the date of enactment of this legislation section, for lands acquired prior to enactment of this section, and 180 days after the date of acquisition for land acquired subsequent to the date of enactment of this section, afford an opportunity to redeem the land, in order of priority, to the following parties: One, the original owner; two, the immediate family members of the original owner; and, three, the Indian tribe within whose reservation such lands are located.

If the Indian Tribe is unable to redeem the land pursuant to this Section B, the Secretary shall transfer such lands to the Secretary of the Interior who shall administer such lands as if they were lands held in trust by the United States for said Indian Tribes.

D: All lease rendered, or other income derived from land, transferred to the Secretary of the Interior, pursuant to this section, shall be deposited in the miscellaneous receipts of the United States Treasury until such time as any of the following three conditions have been satisfied, whichever is the lesser amount:

One, full satisfaction of the outstanding lien of the United States; two, payment of the fair market value of said lands; or, three, payment of the capitalized value of said lands.

Pursuant to this section, interest charges shall not accrue and shall be discontinued from any outstanding liens of the United States governing said lands herein as of the date of the enactment of this section. Effective with satisfaction of such lien, titles of said lands shall be held in trust by the United States for the benefit of the Indian tribe within whose reservation said lands are located.

E: Notwithstanding the provision of Sebsection D, the Indian tribe within whose reservation the acquired lands are located, may at any time after the lands have been transferred to the Secretary of the Interior, pursuant to this section, offer to pay any remaining amount of the lien, the fair market value, or the capitalized value of the land, whichever is the lesser amount, as determined pursuant to subsection (D) and, upon payment of such amount, title to such land shall be held by the United States for said Tribe.

Mr. Chairman, I would like to offer my support of Mr. Lone Fight in his testimony for the Tribe. We didn't bring any testimony to cover individual ranchers and farmers because we figured Mr. Lone Fight would. Thank you, sir.

SENATOR CONRAD: I appreciate that. Let me indicate to you that I very much appreciate not only hearing a description of the problem, but hearing a proposed solution. We may or may not be able to agree on what the solution might be, but it is refreshing to come to a hearing where we not only get a description of the problem but a proposed solution. And I also want to salute you for the excellence of the solutions you propose. I think these are substantive, realistic proposals that have merit. And I think that enhances the credibility of the presentation tremendously. So I want to commend you both for talking about realistic solutions to a very difficult problem.

Let me just begin the inquiry -- and we are going to have to move right along, given the shortness of our time.

My understanding, I saw from your testimony, Mr. Lone Fight, that 25,000 acres are vulnerable here at Fort Berthold. The numbers that I've received from FmHA shows something more than that. I quote from a letter that I've received just recently from Mr. Leet -- and I want to publicly thank Mr. Leet for his excellent response -- detailed, very clear response -- to the questions that we posed. I very much appreciate the response that you've given me.

The letter from Mr. Leet indicates that FmHA expects approximately 32,000 trust land acres would be acquired through foreclosure, voluntary conveyance on Fort Berthold, or possibly acquired by the Tribe by the use of the Indian Acquisition Loan.

Do you have any idea what accounts for the discrepancy between the twenty-five and the thirty-two thousand acres?

MR. LONE FIGHT: Yes, Senator. I think this further provides evidence of the severity of the problem, and that we used very conservative estimates. And I'm glad the figure is higher than ours. This points to the seriousness of the problem that we face.

SENATOR CONRAD: Let me follow up and ask you: On the Indian Acquisition Loan, what are the resources that are available through that mechanism? Are you aware of what the dimensions of that program might be; what the resources would be, that would be available for acquisition purposes?

MR. LONE FIGHT: There are several limiting factors and one is the productivity and the repayability based on the grasslands versus farm lands. If we had a lot of farm lands, maybe the payability would be a lot greater. So that's the thing that limits us.

SENATOR CONRAD: All right. Let me also ask you on the point that you've made on the potential transfer of Indian debt to BIA from FmHA for debt restructuring purposes. You advocate in this proposal that the affected landowner would have the option of remaining with FmHA or having that debt transferred to BIA. From your firsthand knowledge of the individuals involved, what percentage of these loans do you think the landholders would option to go to BIA?

MR. LONE FIGHT: Without polling each member, each farmer, I hate to give an estimate, but I suppose -- and since we have the farmer-rancher panel here, perhaps this can be deferred to that panel.

SENATOR CONRAD: All right. We will be glad to do that. I wouldn't hold you to your answer. I'm trying to get some idea of the magnitude. Perhaps our farmer panel can give us a better idea.

A second question that struck me is on Point No. 2, which was utilizing existing BIA direct loan authority under Indian Financing Act for the purpose of debt restructuring. Are you comfortable with dealing with BIA on the matter of restructuring? Has your experience in other areas been one that would lead you to conclude that that would be an acceptable alternative?

MR. LONE FIGHT: I believe under the statutory protections that are provided under the Bill, I think we would be pretty comfortable with that.

SENATOR CONRAD: The cost, as I understand it, under Point Two, that the $10 million would be a first year cost. Is that my understanding? Is that a one-time cost?

MR. LONE FIGHT: Yes, Senator, on the first time cost that would be about right.

SENATOR CONRAD: Ten million dollars.

You state that the Tribes estimate that the fair market write down value of the accumulated delinquent Indian debt of approximately $23 million, which by the way is very close to the number that I got from Mr. Leet's office -- I think, therefore, we are very close there on those numbers -- is about $9 million. Let me make sure I understand. You are saying there that the actual write down that would occur would be the nine million.

MR. LONE FIGHT: Senator, that's correct, based on capitalization approach.

SENATOR CONRAD: And, at that point, these properties would be able to cash flow?

MR. LONE FIGHT: On a case by case basis, I think that would be correct.

SENATOR CONRAD: The final point I wanted to make to you is -- I like very much the suggestion of the establishment of the Indian Agricultural Technical Assistance Fund. Is it your conviction that BIA is the one to administer that kind of fund? I take it from your proposal that would be your first choice.

MR. LONE FIGHT: I believe, Senator, if they were appropriately staffed that would be the approach to take on this.

SENATOR CONRAD: Let me ask a follow up. You can understand my question. We've heard that there is some feeling that BIA has failed in its trust responsibility in handling these situations. And I can understand that feeling. We'll give a chance for BIA to address that. And we are not here in any accusatory way. I want to make that very clear. I don't think that works very well. We are here to work together. We are all going to walk out of here today, and we are going to be working together tomorrow. So I think all of us have the same interest, which is to try to make some sense out of this very serious problem that we face and try to work through this in a way that achieves results. So I want to make clear we are not being accusatory -- and I know you are not.

But if there has been some failure in the past by BIA to manage its trust responsibility, why would you be interested in seeing them manage the program?

MR. LONE FIGHT: Senator, they have -- the BIA has a long history and statutory base for providing a trust responsibility to Indian tribes. And with the staff properly staffed, we believe that they would do a better job.

SENATOR CONRAD: Let me ask this: Is it your opinion that BIA would be more willing to restructure than FmHA?

MR. LONE FIGHT: I believe that's true. Maybe the Chairman, Mr. Ducheneaux --

SENATOR CONRAD: Could you respond to that as well, Mr. Ducheneaux?

MR. DUCHENEAUX: Yes, sir. The reason we wanted it in Bureau of Indian Affairs is they work and have been working with Indians since 1934. Hopefully, they understand Indians and Indian agriculture. The reason too that we've asked for Congress to establish the Technical Assistance Fund, because the assistant secretary doesn't consider agriculture a business. I don't know what he thinks it is, but it is the only business we have on our reservation. We've set up a bunch of technical assistance centers throughout the nation that are as far removed from Indian Country as you can get. We feel there should be technical assistance to farmers and ranchers on Indian Reservations. We feel it should be administered by the Bureau. According to Mr. Lone Fight, although trust responsibility is lodged in United States Government, and not in the Bureau of Indian Affairs alone, they are the principal implementors of the Trust, and we feel it should remain in there.

SENATOR CONRAD: Let me just conclude, because we are going to have to move through the panel quickly. Your fourth point, Mr. Lone Tree, the --

MR. LONE FIGHT: Lone Fight.

[Laughter.]

SENATOR CONRAD: Lone Tree. I sometimes feel lonely myself. Do you feel like it is a lonely fight?

Here -- your Point 4: Foreclosed or liquidated trust land is to be administered by the Secretary of

Interior on a constructive trust -- seems to make a great deal of sense -- subject to the redemption right of the following Indian persons.

The redemption right, if that were to become a sticking point that we got into a posture where people say, "Look, these specific individuals had a chance. It didn't work out." We certainly respect the need for the Tribe to retain these lands as part of the trust, but the redemption right was a sticking point. Obviously, you would prefer to see the redemption right included. But what if we were unable to get the redemption right included? Would you still like to see the foreclosured, liquidated trust land administered by the Secretary?

MR. LONE FIGHT: I'm going to have the Chairman from Cheyenne River respond to that.

MR. DUCHENEAUX: Senator, you say "redemption right." What are you asking there?

SENATOR CONRAD: In Point 4, Mr. Lone Fight's testimony, he calls for redemption right of those who have lost the land, or in danger of losing it in this one. And what I'm wondering is: If that became a sticking point -- frankly, it wouldn't be a sticking point with me, but I serve on the Agriculture Committee, and we have others that must be persuaded.

MR. DUCHENEAUX: What particular redemption right by who?

SENATOR CONRAD: The redemption rights he is proposing.

MR. DUCHENEAUX: For the tribes?

SENATOR CONRAD: No, the redemption rights for the Indian persons that currently hold the land.

MR. DUCHENEAUX: The owner in the tribe. The thing is, that's exactly what they are asking for non-Indian farmers and ranchers. I don't see why we should be any different, but --

SENATOR CONRAD: Let me be clear on the point -- that's in my bill, by the way.

MR. DUCNENEAUX: Yes.

SENATOR CONRAD: It would do that. Unfortunately, there are those who are putting up stiff resistance to that notion, for both -- for non-Indians and for Indians. So it's not a matter of Indian vs. non-Indian. There are those who just feel strongly that there shouldn't be much of a redemption right. That's why I asked the question.

MR. DUCHENEAUX: Well, sir, the intent of the legislation is not to save the family farmers; and although part of the bill is a round-about way of saving the Farmers Home Administration; hopefully, it will trickle down so it will work and will save some of the family farmers and ranchers in the United States.

But if the land is to be redeemed, we would like to transfer it to Secretary of Interior for operation. There is precedent for this in the old Submarginal Lands Act that bought out the farmers that failed in the '30's, and the Bureau administered that land for a good many years until it was turned over to the Tribes in 1976. That's why we would like to see it.

SENATOR CONRAD: If I were to summarize -- I am playing devil's advocate a bit. As you know, when I am on the other side of the table on the Senate Agriculture Committee, I'm going to hear the argument made that there ought not to be a redemption right for those individuals who had the land and didn't meet the obligations they had with FmHA. You know that argument. You've heard it many times -- and for non-Indians as well as Indians. And I'm wanting to know is what's the answer that you would give back when the other side says, "Look, there ought not to be a redemption right for those who had loans and didn't meet the obligations. They didn't meet their obligations, they ought not to have the redemption right." What would be your quick answer to that?

MR. DUCHENEAUX: I'll play God's advocate?

[Laughter.]

SENATOR CONRAD: Yeah. That's always a good side to be on.

MR. DUCHENEAUX: The reason, sir, is because the people that caused the economic dislocation in the Nation's agriculture are the people that -- I had what I wanted to say a minute ago, but you laughed at me -- are the people, you know, the FmHA and the Reagan Administration, and the Production Credit Association are the ones that are going to be bailed out by this bill. Now, the very fact that the Farm Credit Administration is in trouble, because they didn't administer their business right, is one of the reasons these farmers and ranchers are in trouble. So if they are going to be bailed out, I think those farmers and ranchers that have lived on that place all their life, and raised their family there, should also have a chance to be bailed out by this. And I don't mean "bailed out" -- given a chance to restructure their loan, or whatever, and stay in agriculture. There is an old axiom that says when agriculture prospers, the nation prospers. And I believe that to be true. And I think it's more true of the family farmers. When they prosper then all agricuture in the nation prospers.

SENATOR CONRAD: I'd say you've given a pretty good explanation.

[Applause.]

SENATOR CONRAD: In the Senate Agriculture Committee there is a rule that you not give any demonstration of approval or disapproval. We'll let that one pass.

MR. LONE FIGHT: Mr. Senator, may I respond to that, just briefly?

SENATOR CONRAD: Be glad to hear from you.

MR. LONE FIGHT: In addition to what Chairman Ducheneaux provided, the Bureau also has -- the difference between non-Indians and Indians is that the Bureau has a trust responsibility, and that's to provide a safeguard for Indian lands.

SENATOR CONRAD: Okay. Thank you very much. Thank you both, Mr. Ducheneaux and Mr. Lone Fight. You provided an excellent start to this hearing. We need to move on to our next panel of witnesses: Mr. Huber, Mr. Fredericks and Mr. Baker. Did I get everybody's name right?

I thank all of you for joining us here today. And if you will attempt to summarize -- again, if you have a written statement, you can enter that into the record. It will be printed as if given in full. If you could summarize your testimony in about five minutes, then we'll have a chance for some questions.

Mr. Huber, if you could start.

MR. HUBER: Senator Conrad, it's a pleasure for me to be here to provide written testimony, which I submitted earlier. And I'll try to summarize some of that for you today.

First of all, the testimony that was -- that proceeded us, I would like to take a stab at answering that question on why transfer to the Bureau of Indian Affairs. Under my present job in Bismarck -- I am director of the Minority Business Development Center -- and I deal almost all the time with the Indian Financing Act, and under my testimony -- is this coming in loud and clear?

SENATOR CONRAD: Yes. Very good.

MR. HUBER: Under my testimony, I too made recommendations on solutions to our current problems here on Fort Berthold. But under the Indian Finance Act, their credit program, they administered three programs: Direct loan, specific guaranty program, and a grant program. And transferring, I think, to the Bureau of Indian Affairs will give us, as individuals, the opportunity to work with our local banks. The guaranty program also works with our local banks, through the direct loan program, or the grant program and works directly with the Bureau and the direct loan authorities. So that gives us three options, I guess, under the Indian Finance Act, as individual farmers and ranchers, to apply for operating loans, chattel loans, et cetera.

Also, I don't think in my particular case I would want to sever all my relationships with FmHA. If we could work out some kind a of write down agreement on chattels, cattle, machinery, and so forth, through the Bureau, the land should remain with FmHA. I think when they get a chance to talk today, there are some problems in terms of when all this can take place. Do you have to liquidate all your assets at once, 100 percent, or can you phase them in or phase them out, whatever you want to do. But that's basically, I think, why I feel the program should be transferred to the Bureau. Gives individuals more options. You have the local banks plus you have them to work with more directly. And that's kind of what I base my testimony on, that kind of a solution.

Our problem in agriculture on Fort Berthold came about probably from 1980 on. We had high interst rates. We had inflation. The price of the commodities were rather high at that time. The last three years the price of wheat has been down to two dollars, price of cattle has been down to 50 cents. You know, you take all this away, you lose half your price, it's hard to meet your obligations, and where do you put the blame? It can be put on both places. I don't think FmHA has always given us the opportunity to participate in all their programs of eminent resource loans, the deferrals, set asides, and so forth. So we can put the blame on both parties.

But I think if you look at Fort Berthold, as a whole, you lose the devastating amount of land that has a chance to go under, the unleased land, look at the economic impact that would have on our people. That would just -- the welfare problem, I think that would create would be atrocious. And so where do you start to trade off?

But I think, in summary, basically we have two agencies that we can work with, with the Bureau of Indian Affiars, we have FmHA. It's a matter of getting these two together to work out the -- smooth out, I guess, the lumps of the road, or something. I think it can be done with the two agencies.

I'll take any questions, if you have any, Senator?

SENATOR CONRAD: I'm just looking at your testimony, and I will have some questions. But perhaps we could go to Mr. Frederick's next and hear his summary, and then I'll have a chance to ask questions of all three of you.

Mr. Fredericks, welcome, and if you want to proceed.

MR. FREDERICKS: Thank you.

Good afternoon, Honorable Chairman, Honorable members of the Indian Farm Financing Fact Finding Forum, honored members of the Tribal Council and guests.

I am Kenneth J. Fredericks, Sr., and I want to thank Senator Conrad and the Tribe for giving me this opportunity to present testimony today on the status of

Indian Agriculture and credit practices of the Farm Home Administration and Bureau of Indian Affairs.

I would like to begin my testimony with a general overview of the past experiences our Fort Berthold farmers and ranchers have had to go through during the past three and one-half decades. I am sure you will appreciate the relation this overview has to bringing us to the current status of our Indian agriculturalists. I am also taking this opportunity to include a copy of the testimony I gave to the Joint Tribal Advisory Committee when they were conducting hearings on the impacts of the Garrison Dam on the Fort Berthold people.

I begin with the general overview: Indian tribes and tribal members who live in the Upper Great Plains traditionally make a livelihood from the agricultural natural resources their reservation lands provide. The basic economic categories of Indian people living on these reservations are largely: one, farmer/rancher; two, government employee, which includes federal and tribal; and three, general assistance client.

Through past efforts by the federal government and economic necessity, many of the Indian farmers and ranchers have expanded their operations by leasing other allotted lands and tribal lands besides their own allotments. Some reservations boast that over 90 percent of their land base is Indian operated. These land leases of allotted lands are acquired by Indian ranchers through the Bureau leasing program for trust lands with minimal tribal input. The Bureau leasing programs are designed to operate on a sustained yield basis with rates comparable to the lands outside the reservation. There is no concern for the true economic production for each tract in establishing a lease rate. It is based on comparable or open bid amount in non-Indian transactions.

Likewise, when Indians were buying land to consolidate their holdings, which were fragmented by the federal taking of Indian lands in the high plains area for Pick-Sloan dams, the Bureau started a land appraisal program. This program came too late and was of no help to the Indians when their bottom lands were appraised for an unconscionable low value by the Corps of Engineers. Methods used in the Bureau land appraisal program resulted in land being valued at comparable worth based on non-reservation transactions, rather than the value of production from each tract. Indians buying this land at this rate destroyed the fragile economic balance that sustained their operations in normal times.

Many Indians also bought additional lands and chattels when Farm Home Adminstration funding became available. Tribes also availed themselves of land acquisition loans and purchased lands from other members in order to hold the tribal land base intact. These lands were overvalued, and everyone knew it; but the reason they were purchased was to protect the land base of a farm/ranch in the case of individual purchases; and to protect the tribe's reservation land base in the case of tribal purchases.

The current status of trust mortgages is attached, for the record. And this is in the high plains area which includes the Billings and Aberdeen area. I'm sure you'll be hearing from those people in the near future.

The Bureau of Indian Affairs curtailed the operation of its Indian agricultural credit programs from 1960 through the 1980's. During this period, Indian agriculturalists were encouraged to use outside credit resources; such as, the Production Credit Adminstration, commercial banks, Federal Land Bank, and Farmers Home Administration. This arrangement sufficed during the normal period; however, many emergency loan programs, brought about by natural causes and uneconomic practices, set the stage for what was to follow.

Indian operators, in an attempt to provide their own credit services, formed the American Indian Agricultural Credit Consortium. The profile from this organization is attached for this hearing. There is a little blurp about their group, about the Bureau, commitment they've made to them. And maybe you've heard about it already. I put it in the record so you'll have it here.

The economic effect of a dramatic increase in energy prices, the downturn in the agricultural economy, together with over-leveraged operations and higher lease prices, became evident in the mid-seventies. Impact of these facts soon put the economically and politically fragile Indian agriculturalists in delinquency with their lender. Indian ranchers and farmers were the first to be cut off by the outside lenders.

Many reasons were given for this action, but the most prevalent being the jurisdictional issues encountered during replevin or foreclosure actions. Court cases were tried such as Smith vs. PCA, and others which were widely publicized, to the extent that lenders are just not making loans to Indians for agricultural purposes. Meanwhile, the tribes who depend on lease payments to function and pay their obligations are not receiving this revenue. The trust lands released from Indian lessees have been advertised on the open market for non-Indian or Indian bid and apparently no one was interested in leasing these lands, as no bids were received on any of the tracts. The lands are currently idle and the tribes are asking the trustee for assistance. Individual Indian members who operate ranches and farms are asking for a source of credit to make their units produce and participate in the option available from primary lenders, mainly to purchase their mortgaged property at fair market value. The current value would be capitalization rate. This would free the borrower from over-leveraged loans and allow them to restructure their obligations with more realistic cash flows.

It is agreed that in order to lend credibility to our proposals, we must review and evaluate the agri-business economy in Indian country with an objective of making this business more economically sound and labor intensive.

Currently there are no credit resources available to the Indian ranchers and farmers. It is apparent that the current Bureau of Indian Affairs' credit policy does not include Indian agriculture. The Tribes are experiencing severe cash flow problems because of unleased or unpaid leases of their agricultural trust land base. No economic adjustments have been made by the leasing agent, trustee, to reflect the downturn in agriculture and keep our lands competitive for leasing. There has been no adjustment made from the year before.

I have attached a letter and short chronology of events from American Indian Agricultural Credit as an example of what I have said. The result of this lack of concern is: Indian operators without short term credit cannot keep their ranches and farms in production; and, as a result, are going deeper in debt each year and the value of their collateral continues to decline through depreciation.

The BIA has failed to recognize their trust responsibility to protect the trust land base held for Indians. Farmers Home Administration, and other outside lenders holding trust land mortgages, are willing to write off loans at fair market value of current collateral provided borrowers can find alternate financing. Indians have no source of credit to avail themselves of this opportunity to resolve the threat of foreclosure. This is what this is all about.

Over one million acres of trust lands in the high plains area are currently subject to the threat of foreclosure action. I have included documentation in the written submission to substantiate this fact of what I said.

If Indian ranchers and farmers are allowed to be put out of business by not putting up some program to provide assistance, we can expect our general assistance funding requirements to grow by at least 2,000 families. This number of families multiplied by an average of five members comes up to 10,000 additional GA clients. 10,000 GA clients times 99 per month is $990,000 a month times 12 months is $11,880,000 dollars per year. So you can see these problems belong to all of us interested in, or charged with, protecting trust property and improving the quality of life of Indians on our Indian reservations.

Recommendations:

The Three Affiliated Tribes strongly supports the contention that the BIA is required to provide continued support for the Indian use of Indian resources. I include 25 USC 1451, found in Section 1 of PL 93-262 for reference, which is the law enacted for Indian Financing Act.

The basic use of these resources in the high plains area is agriculture, therefore, the BIA should provide the same level of services for our trust land resources as they are currently providing for energy resources, forestry, fisheries and water. There are commissions that do these things. Some of the things that we have has been suggested in previous testimony by the Tribal Chairman. They are always ready to do things for energy and forestry, and yet they have nothing for agriculture, which comprises the majority of the activity, economic activity, of the Indians in this area. We also note that over 13 million acres of the trust land base in the high plains are Billings and Aberdeen.

The Three Affiliated Tribes stand ready to work with federal, tribal and state governments, as well as the Congress, to effectively develop the credit and technical resources through agriculture. This may require many new approaches to the Indian agri-business practices such as capitalization, processing, and marketing of our agricultural industry products on our reservation. Once this capability and credit resources are in place and functional, the Tribe could set up an appropriate entity to ensure the sound operation of what has been established. This may well be a recognized banking institution.

During this period we need to work with lenders to establish a mediation period and hold in abeyance their pending foreclosure actions on trust lands. All parties would hold paramount the need to keep these lands in trust and agree to a provision for lenders to realize the fair loan value of the collateral held by the lender at the beginning of said mediation period.

We also recommend that the Bureau support efforts by the Tribe to develop a financial infrastructure, within and outside the tribal government, to interface with the state and national banking industry. The long-term objective would be to participate in development of a banking and lending facility with a primary focus of developing a capacity to provide agricultural credit for the high plains tribes. A necessary short term objective would be to use existing capabilities to provide technical assistance and help the operators stay in business with short term production loans to meet operating needs. In many cases, the primary lender could release collateral to make operating funds available where they can be assured that their client is receiving assistance in restructuring operations.

One such capability currently in place is the American Indian Agricultural Credit Consortium headquartered in Billings, Montana, with many Indian clients in North and South Dakota, Nebraska, as well as Montana. Reference to the Consortium's loan profile has been attached for your information, shows funding to provide operating funds for production loans could be made available from the current Bureau of Indian Affairs direct loan funds. As was pointed out, every effort would be made to get the primary lender to release funds from production receipts to meet production costs. In some cases an operator may need to borrow in order to pay leases for the coming year. This will help stabilize the operators, as well as assist the tribes and allottees, by keeping their lease revenues intact. This short term objective needs to be implemented this fall, or lease revenues will not be available to the tribes and allottees, and many operators will have to give up their operations.

Attached is an abbreviated list of actions required by Congress, Bureau of Indian Affairs, tribes, lenders, and Indian clients, which would bring about the necessary agricultural credit program. It is necessary that these recommendations be taken seriously and implemented on a crisis basis. Many of them have been implemented administratively. We do not want to see the capacity and capability of our Indian users of the trust land base disappear altogether.

As for recommendations on how you can help us, I am going to read a resolution proposed to the Tribal Council which incorporates the needed consideration by Congress to provide funding and necessary changes to federal agency regulations and policy to facilitate access of Indian clients to buy out and debt settlement provisions by the Farm Home Administration and BIA. I have inserted a copy of this resolution for future reference.

One further thought is that it will be beneficial to allow immediate family members the opportunity to buy out or debt settle a family members' debt to enlarge an uneconomic operation and make it a cash flow. In some cases the family member has moved on and the property is essentially idle or in marginal use by another family member.

Mr. Chairman, I thank you for this time and sincerely hope that our efforts today can result in Congressional and administrative activities which will bring relief to our most pressing problem on the Indian Reservation in the high plains country. Thanks again.

Now, on that resolution, I'll just read the resolution part. I beg your induigence on that:

Therefore be it resolved, that the Tribal Business Council requests the Honorable Legislators to include an Indian Section H.R. 2340, and the like bill on the Senate side, to include the following:

That $100 million be made available through the Bureau of Indian Affairs Indian Financing Act for the Direct Loan Program specifically to allow Indian agricultural operators, and their respective tribes, to utilize the debt settlement buy-out programs offered in the above Bills now being legislated through Congress, or existing Farmers Home Administration regulations.

That can be $20 million a year for five year period, as was proposed by Cheyenne River and reiterated by Fort Berthold.

That Congress mandate that the Bureau of Indian Affairs add to the languge in 25 CFR 152.24, the following:

When debt settlement of mortgaged trust lands with Farmers Home Administration, or other lending institution, to determine the value of trust lands, the capitalization appraisal method shall be used at the election of the borrower.

In other words, give a borrower a chance to take the lower rate if he can testify to show cash flow.

That Farmers Home Administration be authorized to make appropriate changes to facilitate utilization of the capitalization rate in effecting debt settlement with tribal member enrollees and tribes.

Some of them say they have it, and some say they don't. Let's make it quite clear it's available.

And another one, backing up to -- Bureau of Indian Affairs has the trust responsibility to go to fair market value when the land is in trust, to the detriment or benefit of the Indian. So we can clear that by saying, you know, that -- I mean by requesting that administrative change in the regulations.

Be it further resolved that the funds appropriated be administered at the area office level with five percent used for technical assistance and 20 percent for the grant provisions of the Indian Financing Act.

One further comment, I noticed there was a limitation placed on the amount. I think there is a $400,000 limitation. I don't see why that would be necessary, unless there is a compelling argument to the contrary. I don't think that should even be in the legislation.

SENATOR CONRAD: All right. Thank you very much, Mr. Fredericks, for that excellent testimony.

Next, if we could hear from Mr. Baker, and then we'll go to the questions. Thank you.

CLEMENT BAKER: Thank you. Senator Conrad, my name is Mr. Clement Baker. I am an enrolled member of Three Affiliated Tribes and a Hidatza-Mandan Indian. I was born in 1932, raised in a community called Independence, which was located in the beautiful Missouri River Valley in the Fort Berthold Reservation, a locality that was abundantly rich in all the natural resources which supported the ranching and farming way of life. This included natural shelters for livestock from the severe cold of winter, ample water, timber, the most natural hay meadows for feed, and productive fertile farmlands. This community was flooded by the United States Government.

My father, James Baker, was one of the early ranchers in this community of Independence. In fact, the name "Independence" given to this community reflected the spirit of the group, which were hard-working and self-reliant people. At the behest of the United States Government, they left the village way of life that sustained them for centuries and were moved to a less productive area of the Reservation. The breakup of a community has had tremendous long-term effect on the social, cultural and economic stability of the Tribes and the individual families.

It should also be mentioned that the Daws Act, enacted earlier, had already forced the Indian into the role of a farmer or rancher, as well as forcing the values of capitalism on a society which lived different values. This group of people, which my father was one, accepted the challenge and became entrepreneurs. Many of the families of Independence formed a cooperative called Farmers Union -- no relation to the nationally known group now -- which raised funds to purchase necessary farm equipment; such as threshing machines, harvesting and farming equipment, et cetera. They did not ask for any subsidies from the government. My father ranched and farmed until he became disabled. My roots go back to these people of the Hidatsa and Mandan Tribes in the Independence District.

White ranchers of the Independence era lived just to the west of this community in an area known as the "Big Lease" in cow camps situated in a vast open range country. As a young boy, about around the age of 12 years old, I remember riding into these camps where you never saw a padlock on a house. You could go in, have something to eat, leave a note and go on your way, or stay overnight. Recalling these events, which have not become better with time, in an era in which trust, generosity, community and hard work were the norm, provide the background to my comments on FmHA and the BIA.

The problems with FmHa through my experience are the following:

There is an absent of technical assistance with respect to loan services. There is a lack of staff. There is a problem with forms, farm home plans, and the financial projections and plans which are utilized by the FmHA, which are many times too complex and require technical training to confront them, and appear to be produced by individuals with a great deal of technical training or the college graduate.

Another aspect, which is a two-edged sword, was the liberal credit policy of FmHA which began in early 1970's, or thereabouts. This period allowed credit availability where none existed for the Indian rancher and farmer. This liberal policy appeared to be an answer to the absence of credit facing those of us who wanted to get into the cattle or farming operations. However, after three to four years of the liberal credit, it was apparent that agriculture business was a capital-intensive business where payability of the loans should have been the rule, not the exception. I was going to have to pay the loans back somehow, and I believe many of us, Indians and non-Indians, forget, or didn't choose to focus too much attention on repayment. If there is a problem with FmHA in this regard, they should have examined repayment. On the other hand, I, as well as other borrowers, have to accept equal responsibility for our actions. Since the money was available, many ranchers and farmers focused more effort on getting more money than examining repayment. I also believe FHA, FmHA, gave out more high risk loans than they possibly should have.

There are the other factors that also have to be mentioned, which include the reciprocal nature of the farming and ranching business. These factors, coupled with high interest rates, high interest costs, severe winters and drought, and overall economy in the early to mid-1970s, directly contributed to our current farm/ranch crisis.

While FmHA has been guilty, in my opinion, of perhaps shortsightedness and lack of scrutinizing loan applicants, without FmHA many of us, including myself, would not have had the opportunity to realize our dream of attempting to make a living in farming and ranching.

While I have not paid off my loan, I believe I'm able to maintain my operation today by living within my means. That requires a great deal of budgeting, utilizing used equipment and constantly keeping and watching every penny to make sure it works for me. I'm not saying my way is the correct way, or the only way, of running a ranching and farming operation. To date it has worked for me.

The BIA is another factor in this farming and ranching business; and, in my opinion, a major problem compared to FmHA. The Bureau's role in raising the grazing fees, which were approximately 27 to 57 dollars per AUI, animal unit, in the late 1970's presented a significant financial burden. This doubling of grazing fees was subsequently followed by another raise in fees to approximately $78 per AUI, animal unit, by the earlier 1980's. The result and effect of these variables on the Indian family-owned farm and ranch was devastating. Through this means, the BIA managed to further reduce the number of farm and ranch operators on Fort Berthold.

It should also be mentioned that prior to getting into a farming and ranching business, it is critical for the individual farmer and rancher to realize that management and planning, and some luck, are critical to the success of their operation. Some may argue a great deal of luck is required. However, I believe the management and planning are the more important factors.

Finally, income generated from my personal labor cannot be viewed as income, much less spent before it is earned, since the reality dictates that profit in our business is a goal we hope to realize, knowing full well that the dictates of markets will, in the final analysis, see our labor as a contribution to a way of life. In other words, I do not get paid for my labor since all or any profits, if I'm fortunate, go back into the operation and loan repayment. I believe that anyone who plans to get rich in this business, given the constraints of the reservation, the climate, the BIA, and removal from the bottom lands, they will most certainly face a very harsh reality. Without my spouse's income to keep the grocery and light bills paid, and not viewing electric heat and indoor plumbing as a necessity, but a luxury, has contributed to the philosophy of what it takes to succeed in this business. This will be the first since year 1979, if the market holds, I will realize a profit.

In closing, I have found assistance from the BIA completely lacking; and, in fact, a hinderance in that grazing fees are established much higher than I feel they should be. THe BIA, Bureau of Indian Affairs, had no meaningful technical assistance to provide to us ranchers and farmers. In terms of FmHA, they have provided money, perhaps too much to a few, and not enough to some; but, nevertheless, it was a source of capital which was made available to Indian ranchers and farmers. I feel, as one borrower, that, for me, living within my means, getting by with used equipment, keeping records and being honest and open with FmHA, and keeping repayment of my loan as the goal, enables me to keep perspective and has til now allowed me to maintain my ranching and farming operation.

SENATOR CONRAD: Thank you very much, Mr. Baker for that excellent testimony.

Let me say the testimony of all three of you has been superb and very helpful in understanding the problem and potential solutions as well. I think you've all done a real service both to this Committee and to your communities in providing this testimony. And I know it's laborious to put together testimony; and, again, I deeply appreciate the efforts you've gone through and the job that you've done. The quality is exceptionally high.

We are faced with what I think can be fairly termed "a crisis." I don't think anybody that looks at these numbers can conclude anything else. We are on the brink of having a situation in which a significant percentage of the land, that has been traditionally Indian-held, will be lost through foreclosure, or voluntary liquidation. And the question is:

Are there steps that we can take, and take quickly, in order to preserve this land in the hands of the Indians, who have for a long time held it? I have been struck by what I've heard repeatedly here in terms of the effect of the creation of the Garrison reservoir on the long-term viability of this community. And I would be interested in hearing from each of you if, in analyzing what has happened, if you are suggesting that the primary cause of the problems that we face today are from the dislocation created by Garrison, and by what has not been determined to be an unfair compensation to the Tribes for that taking.

Mr. Huber, would you comment on that?

MR. HUBER: Yes, Senator, I think, as illustrated earlier, that the taking of our most productive land, and then dislocation of all the families up onto the high plains, how do you measure that in terms of dollars? What we were paid at that time for that amount of production, what that land would have brought the Tribe today would be enormous, I would say. I would say that probably was the beginning of probably a lot of our problems here on Fort Berthold on farming and ranching. They broke us up, took away our bottom lands, and where cattle grazed down there in the winter time, and they couldn't get by. I think some of these gentlemen -- like Clement said, they lived down here, they know what it was like. It was beautiful country.

SENATOR CONRAD: Mr. Fredericks, would you care to respond to that?

MR. KENNETH FREDERICKS, SR.: Yes, sir. Thank you. I think what we ought to look at is the real economic impact, is the fact we were moved up to what we called "Wild Horse Country," We used to go up and get horses in Wild Horse Country. The cattle were down at the river bottom. We moved up there, it took probably three ton of hay to winter a critter and where it took a half ton down on the river bottom. It took a while to get used to the idea that you had to have shelter and that much hay to winter cattle.

And, as a result in learning that, many of our ranchers hurt themselves immeasureably by depleting their foundation herds, and, also the additional acreages necessary to maintain the herd, and that brought about the need for additional lands to be bought. Our place down on the little river brought $3.33 from the corps of engineer in payment. The Bureau Indian Affairs appraised land, without improvements, at $54 an acre, because they struck oil someplace on the Reservation. And the Bureau's instituted appraisal program, which you can see, caused a tremendous problem to replace the land in this way. And we can't borrow money for the farm land. These are the facts. Where do you get it to pull the land base back together on that?

SENATOR CONRAD: Mr. Baker?

MR. BAKER: I don't know what I could add to that. But just let me tell a little story here, probably would point out the fact that it's a major factor. I can remember the times, I grew up down there, I was about 21 years when we left our river bottom homes. I used to stay with my relatives, by the way -- that's one of the Indian customs, extended family. My mother died when I was young. Those kinds of things we lost too. You can't measure those with money.

I remember that I used to stay with my brother-in-law. He lived right along the edge of the

Missouri River there, north end of Independence. He used to winter his cattle. He had his ranch headquarters and the home right below the bench there, and up on top was his facilities, corrals and everything. In the winter time he had his cattle down there in the river bottom country, right in the timber, where the timber was cottonwood, probably about 20 feet high, underneath that was the shrub trees, thicket, just like -- you could almost see a tunnel in those places, you know. And now days, in order to have a shelter like that, it would cost you twenty, thirty thousand dollars. Besides, these quonset huts, $30,000 sheds, and stuff, they are no good as far as I'm concerned. A veterinarian agreed with me on that. Those kinds of places -- you concentrate your livestock in one barn -- are prone to disease, prone to losses, et cetera. That's the only thing -- that's the main thing that comes to my mind. I've seen that. I wish we had that country yet.

SENATOR CONRAD: Thank you very much for those comments.

Let me turn now to the representatives of FmHA and then BIA, because I have some questions that I want to make sure we get entered into the record before we conclude this fact finding forum.

Mr. Leet, maybe you could give us some idea of the time frame we are dealing with here. We understand that a substantial percentage of those who are FmHA borrowers are in danger of losing their land through foreclosure, voluntary conveyance. Could you give us some idea of the time frame that we are dealing with here? In other words, if Congress wanted to do something along the lines of what's been proposed here and transfer to BIA, or some special provisions to assure that Indian-held lands remain in the hands of the tribes, that there would be an opportunity to make that kind of judgment. Can you give us some notion of the time frame that we have available here?

MR. LEET: I think the problem is pretty immediate with those 40 farmers who are in jeopardy of losing their operations. How are they going to finance their future operations without something being done, without financing, how is the land going to be operating?

True, we have Indian Acquisition Loan that is one facet of help, perhaps, where maybe a farmer could reduce the size of his operation, enter into a lease with the Tribe, lease that same land back, and get his debt down to where he can cash flow the balance. This is something that can be considered right now for some operators. With other operators, that would not be an option, perhaps. But I think the question -- the answer has to be many faceted. But that is one of the answers. The 40 people who are really in trouble are in trouble now.

SENATOR CONRAD: And what's the total land that those 40 farmers own? Is that the 32,000 acres?

MR. LEET: I would guess, we are estimating about 32,000 acres that would be in jeopardy. Now, the Indian Acquisition Loan may be able to purchase about 20,000 of those acres if we had to buy them. But I don't visualize we would have to go through foreclosure, or voluntary conveyance, if the Tribe could buy the land and keep the land in trust status before foreclosures. As I understand it, the Tribe buys the land, the trust status is not lost. Maybe -- correct me if I am wrong -- that's my understanding, it's only lost through foreclosure. That's what we should be aiming for, not losing that trust status in these cases.

SENATOR CONRAD: Maybe we can come back to the question in terms of a time frame. Are you talking about it being virtually immediate? Are we talking about next week? next month? Is there anyway we can buy time?

MR. LEET: We are through this year. We are also looking what are we going to do about the next -- how are you going to pay the leases? I think, as was alluded to, who is going to finance the leases if there is no way you can get it back. So it looks like this is a real problem. And this lease operation is coming up in -- due in November, as I understand it, about the time they are due. So that's pretty close.

SENATOR CONRAD: Let me just explore this a little further, so I make sure I understand. The first crisis that we face comes in November?

MR. LEET: December. He corrected me. The leases are up in December.

SENATOR CONRAD: In December. Maybe you can explain to me a little bit further precisely what we face in December. What we need is financing for those leases in order to prevent foreclosure at that point? Am I correct?

MR. LEET: Well, at this point, of course, I think the judge's decision has stopped any question of any further adverse action, so we are biding time, which is not helping our people or anybody. So we don't know what we can do as far as that goes. Right now, they are just sitting out there, as far as I Know, these cases, that we cannot continue it, because I'm sure they can't repay them. Now, what can we do? Can we take some of these cases and develop something with them, restructuring the loan, selling some of the lands to the Tribe, keeping on with the rest, renting the land back to them? We should look at all those things and those things take time.

SENATOR CONRAD: I heard you say that in your estimate that perhaps 20,000 acres could be dealt with through the Tribes, who could purchase it before foreclosure to maintain the trust status. Is that 20,000 based on analysis of the file?

MR. LEET: That 20,000 is based on approval of land acquisition loan where we estimated a current market value of the property would be about that. We can buy with $2 million about that much land.

SENATOR CONRAD: We could buy 20,000 acres with $2 million. What would be required to deal with the other 12,000 acres? Is it proportional, or is there other differential between the 20,000 acres that has been identified and the 12,000?

MR. LEET: I'm hoping that some of the 12,000 acres that are at risk now would stay in the hands of the borrowers who are in trouble, by reducing the size of their operation, receiving just the value of the land they sell to the tribe, retaining some of their operation, renting back that land from the Tribe and they may then have a viable operation. I don't know. That's one option, as I see it.

SENATOR CONRAD: So correct me if I am wrong, if I'm misinterpreting what you are saying. As I hear you, what you are saying is 20,000 acres could be retained in trust status by use of the acquisition loan from that $2 million. In addition, some portion of the 12,000 acres, hopefully, a large portion of the 12,000 acres, hopefully all of it, could be held in the hands of those who are currently on the land by selling part of what they currently hold to the Tribe through the Land Acquisition Fund; is that --

MR. LEET: That's correct. I believe that some people think we could buy more than 20,000 acres with that $2 million. Lorace Hakenson, our County Supervisor, believes we can provide 40,000 acres, which means we can look to the future. I don't know if that's true.

SENATOR CONRAD: Would there be some way we could get some further analysis of that number to see if we could?

MR. LEET: Certainly we could. I think that would be involved in our making of the loan -- land acquisition loan.

MR. OTTMAR: I also believe we could work with other agencies and the tribe to determine where exactly we are at there. It will depend exactly on the value of the property, when it was purchased. This 40,000 is a guesstimate we are using. It could go higher than that, depending on the value.

SENATOR CONRAD: Mr. Fredericks, I think, has a question or a comment.

MR. FREDERICKS: I would like to add a little more enlightenment on this whole thing. The funds that the tribe borrows are largely obligated to those people who have applied for fee patent, or about to apply for fee patent, who are not clients of FmHA; and the Tribe, in order to protect its trust land base, must try to buy these lands, otherwise they could be -- beneficial interest can sell the trust deed on the open market. So that's a dilemma for the Tribe. They've got the ranchers they want to save; and yet they have these other people that are wanting to apply for fee patent, to get rid of their land to reckon with; otherwise, that might serve to diminish trust land base.

SENATOR CONRAD: This goes to a very important point here. I want to make sure we are understanding here -- and we'll get to you in just a moment, sir -- what I hear you telling me is the $2 million has another calling -- other requirements to be met. Do we have some notion of how much of that $2 million would be available for the purpose that we've just discussed: land acquisition that's FmHA problem related?

MR. FREDERICK: I was looking around to find somebody from BIA Realty. I didn't. Maybe the Superintendent could answer that.

SENATOR CONRAD: Does anybody of the BIA representatives -- does anybody have a handle on how much of that $2 million would be available for the purposes that we've just discussed with Mr. Leet?

DR. SPANG: Well, Senator -- I am Superintendent Spang. I think I would defer that to the chairman, Mr. Lone Fight, since the Tribes applied for the loan.

THE COURT: Is Mr. Lone Fight --

MR. LONE FIGHT: I would like to have the Tribal Attorney respond to that, because there are some special conditions attached to the loan, as indicated.

SENATOR CONRAD: I think it would be very helpful to the record here, Ray, if you could illuminate.

MR. RAYMOND CROSS: I would like to thank you, Mr. Senator, for giving me this opportunity to respond to this question. Let me mention a little bit about the origins of this loan; and, unfortunately, I wish the rosy picture that Mr. Leet painted was true and accurate. The unfortunate thing is that given the constraints, the repayability, that we had, the use of these loans for the purchase of the foreclosure lands, which are largely grassland, means that we are going to have to look with a very jaundice eye at the acquisition of a large number of these acres. And the reason for that is we are going to have our tribal comptroller certify the repayability capacity of these lands before we get into the same straits that prompted this crisis we are describing today. So I think, unfortunately, in terms of the application that we submitted, I think that very little of that money, perhaps a fraction of that money, can be used to address the purchase of the 34,000-35,000 acres that are being mentioned here. And the reason for that is that turnaround on those lands simply won't repay the loan.

Consequently, I think that we are going to have to look elsewhere -- and that's to Congress -- for resolution of this problem. The Tribes certainly want to pull themselves up by their bootstraps, and the Tribe certainly wants to play an important role, but the Tribe won't help the farmers and ranchers, and certainly won't help themselves, if they get into bad loan situations that they later have to be rescued from, just as the farmers and ranchers have to be rescued.

SENATOR CONRAD: Mr. Leet, or Mr. Hakensen or Mr. Ottmar, whoever might be the best one to answer this question.

In your analysis, what -- or perhaps not based on analysis, perhaps based on your own feelings from knowing the files -- what kind of write down value would be required in order to cash flow a significant portion of the land that's in question here? Are we talking 50 percent write down? Do you have any feel for that, what order of magnitude we are talking about in order to have viable operations?

MR. LEET: Well, I don't know if this works. Generally, if the land sells for the present market value, and that is close to the capitalization rate, you should theoretically, if the present market value is akin to the present, to the capitalization rates, which they should be close, as the deflation has came about, then you should be able to rent this land at sufficient revenue to make the payments. We've had very good -- we've had very good luck with Indian Acquisition Loans. I think we have $8.3 million out, I think they are all current. So our history is very good. So, again, if you are able to purchase this land for the true value, present market value, and the present market value has been reduced to the capital rate, which is about the same -- and in other areas of the State this is true -- then you should be able to rent the land out at a return that you can repay the loan. This may not always be true. I'm not saying the land acquisition loan is the -- remember, I said it's one facet to help. And I think you agreed with that, when the loan was made that it was a true help for the Indian people here. It's one way, and I believe we should be able to examine that, and immediately, to help Indian residents stay on the farm.

MR. RAYMOND CROSS: I think that is absolutely right, Mr. Senator. It is an adjunct, but the goal of the tribe is -- and the necessity for Congressional action is clear in order to keep the farmers and ranchers on the land. The question of the write down, the depth of the write down, the deep discount that is going to be necessary to achieve that -- and I think Mr. Leet will agree with this -- that the Indian Acquisition Loan can work only in conjunction with -- only in sync with a policy that's aimed at keeping the Indian family farmer in business. It cannot be a substitute for -- and never was intended as a substitute for -- the action that's necessary, both administratively and congressionally, to keep the Indian farmer operating on the land, to keep the lands not in the hands of the tribal government, but in the hands of the people that operate and benefit from the land.

SENATOR CONRAD: Let me ask this question, and whoever is in a position to answer it -- either Ray or Ralph, or one of your staff:

What would prevent the Tribe from using some portion of that loan, or perhaps all of it, to buy this land, and it would seem discounted? In other words, you would be selling the land based on the capitalization rate based on an appraisal of its current value.

MR. LEET: Current value, and maybe one-third of what is owed against it.

SENATOR CONRAD: What would preclude the Tribe from getting that land through the Land Acquisition and turning around and leasing it back to the current operators? Is there anything to preclude them from doing that?

MR. LEET: No, you can do that.

MR. OTTMAR: They've got authority right now.

MR. LEET: They can do that.

SENATOR CONRAD: I don't want to minimize the need for Congressional action here, because I think there is probably a clear case for Congress to play a role in this process.

MR. LEET: You could even sell it back, sir.

SENATOR CONRAD: They could sell it back? I think there is also a need for us to understand every piece of this puzzle and to calculate very carefully what we might do to make this work together.

Sarah Vogel, the Assistant Attorney General, is in the audience. Sarah has a question or comment.

MS. SARAH VOGEL: Yes. I think one difficulty that is with respect to the purchase, is that Farmers Home, in order to compromise debt with the existing farmer, requires in essence that they -- they can purchase it out at the present market value; however, the farmer is still left with that massive debt which will very much interfere with continuation. And the restructuring of FmHA debt seems to me the best solution because they've already said that they would have to take the two-thirds loss. If there were a better transition, I think that is what is needed -- a transition between the farmer who is operating it now and the farmer, we hope, will still be operating it. But if there is any necessity in terms of liquidating those assets, the difficulty with having the Tribe have the land is: will there be anybody to rent it when they get it back, or will that farmer be gone?

SENATOR CONRAD: Let me summarize what I hear you saying -- and, Sarah, if you can hear me okay? See if I've come back to you with what you are saying.

As I hear you, you are saying: Look, the value, fair market value, of those assets that are held by the people who are on the land now is down by a factor of perhaps two-thirds, using Mr. Leet's suggestion. We understand that's a rough approximation. Why not restructure through FmHA, leaving those people on the land, dealing with their FmHA problems so that their ability to attract future credit is intact, rather than going through a more circuitous route of using the Land Acquisition Fund to obtain that land and then leasing it back out to farmers who would still have hanging over them their FmHA obligations? Is that the gist of what you are saying?

MS. SARAH VOGEL: Yes.

SENATOR CONRAD: What would be the reaction to that from FmHA?

MR. OTTMAR: I'm sorry. I wasn't --

SENATOR CONRAD: What she is saying is that if instead of going through the more circuitous route of having the Land Acquisition Fund buy some of this land, the problem with that, that she sees, is that those farmers who are currently there are still burdened with FmHA loans. If, instead, FmHA could write down to somewhere near current market value to those people, you would then deal with their FmHA problem and short circuit the more circuitous route of selling to the Tribe, having them lease back to people, et cetera. I understand the policy problems that you have there, but --

MR. OTTMAR: Senator, at the present time we are not authorized to do that. But, if we were, that would be another avenue we could use. But we do have one authority at this moment that Sara did mention; and that is, if you sell part of your farm for cash, we can release that individual of the total liability of his debt. But it's true we would not continue with that individual any longer, according to the present regulations that we have.

SENATOR CONRAD: Okay. And, Ray, did you hear what he just proposed, because I think that's an important --

MR. RAYMOND CROSS: Let me mention, Mr. Senator, that I did hear what he proposed. And I think this is an appropriate time to bring BIA in. Let me tell you this, Mr. Senator, this has had a long history, and I've had a number of discussions with Mr. Ottmar and Mr. Leet on this matter.

One major road block to working out debt restructuring is the trust status of the land. The odd fact is that BIA now, at this late date after the horses are down, they want to lock the door. And the question they have is whether, consistent with their trust duty, can they use capitalization value as an approach to restructure. So that's another issue in which, even if these write downs were available, even if FmHa were authorized, BIA would say we cannot use capitalization approach because we are stuck with fair market value approach. So that to the Indian debtor it's too darn bad, because the trust status bars us from exactly the solution that we hope FmHA is endowed with under your bill and the other bills. I think we have had that discussion a number of times with that and --

SENATOR CONRAD: This is a Catch 22 --

MR. RAYMOND CROSS: -- I would like to hear BIA's comments.

Mr. Senator, you've said that exactly right. It is a Catch 22, because, oddly enough, the trust duty is invoked to bar the one route that some of these Indian debtors have to see the light of day after their debts are restructured.

SENATOR CONRAD: Let's go directly to BIA: Two things I want you to know: Number one, I'm out of time. We've gone 45 minutes over what we had intended to do. I'm glad we've done that, frankly, it has been a good investment of time. But in order to meet our next obligation, which is in Tioga, we should leave here right now. I'm not going to leave here right now, because we are on the brink here of perhaps making some breakthrough, at least in my understanding of what our options are here.

MR. RAYMOND CROSS: We appreciate your time, Mr. Senator.

SENATOR CONRAD: I don't want to leave here at this moment. Could the BIA give us some reaction to what we've just heard in terms of trust status preventing us from using some of the alternative solutions we have just had presented to us?

MR. COLLIER: Senator -- Bill Collier from Aberdeen. I think Ray saw me shaking my head no to some conversations that was going back and forth there a few minutes go. Along the conversation of the tribe acquiring some of these individual land owners, lands through the loan acquisition, it then goes into the name of the Tribe, and most tribes they cannot turn around and sell that land based on their Constitution.

SENATOR CONRAD: Could they lease it?

MR. COLLIER: They could lease it. But once the title changed over from the individual allottee into the name of the tribe, the tribe could not then sell that land.

Now, as far as some of the comments back and forth regarding write downs, discounts, and so forth:

I think that if there was a way to discount some of the loans, the documentation, and so forth, I don't think there is any danger of it going out of trust, or any problems in that area.

We have approved many loans here in the last several months, loans where we've bought down FmHa land. They released their mortgage on it, title remained in trust, and everything operates.

SENATOR CONRAD: So what I hear you saying, and I want to make a reality test here -- from your perspective, it would be possible for one of two things to happen here: One, to have FmHA write down these loans -- and I heard FmHA saying they don't have the authority to do that. Is that on basis of regulations or basis of statute?

MR. LEET: I'm not sure. I think it is statute. I'm not sure.

SENATOR CONRAD: One thing my FmHA bill would give you is additional authority in that area. And I was just advised on Friday -- I tell you this, Ray -- I was just advised that my major FmHA provisions have been included now in the consensus bill that Republicans and Democrats on the committee have agreed to. I just found that out on Friday. I was advised by my staff. So we may have moving through the Senate an additional flexibility that would be given to you to deal with the situation like this.

But I also hear you saying if the loan fund were used to acquire part of that land, that that land could be released to those who are currently there. If the FmHA were selling for cash to the Tribe, the current land owner could be relieved of debt, but you wouldn't deal with them again. Do I understand correctly?

MR. OTTMAR: That's correct.

SENATOR CONRAD: Okay. That's an important piece of understanding.

Mr. Fredericks?

MR. FREDERICKS: I think going back to the understanding of what was at issue, was the idea the Bureau, BIA, has to collect fair market value as long as land is in trust, Bureau Indian Affairs' requirement that they collect fair market value for that land is not, as I understand, statutorily mandated but rather regulatory.

SENATOR CONRAD: Based on regulation promulgated by the Agency?

MR. FREDERICKS: In the interest of the Indian, they could ask and seek a blanket waiver for that purpose, as long as they do it for the best interest of the Indian under the trust.

SENATOR CONRAD: Could I ask one further question that I'm saying nags me, but -- and, again, please don't misunderstand. I'm not being accusatory or anything else. It is a matter, though, that I think deserves an answer. I received a letter from Melvin Rousseau, who is the Acting Area Director of BIA, and who describes himself as the principal federal representative for BIA in the Aberdeen area. A very good letter, by the way, really an excellent letter, and very forthcoming on the problems we face. But there was one sentence -- two sentences in this letter -- that concern me. And perhaps somebody from BIA might respond. He said: "The Bureau does not review or conduct analysis on Farmers Home Administration loans. We do, however, review all trust land mortagages to assure that the security pledged is not excessive."

As I read that, the BIA does review to see that what is pledged as collateral is not excessive, but did no analysis to ascertain whether the loan made was excessive. And what I'm wondering is: Is that in keeping -- and I'm not suggesting anybody here is responsible. Is that in keeping with the trust responsibility that the Bureau would have? Maybe Mr. Arnold is the appropriate one to respond to that, or Dr. Spang. Do you see what I'm saying?

DR. SPANG: I think that Mr. Collier could respond to that, since the reviews are done at the area level rather than locally.

SENATOR CONRAD: Okay. Mr. Collier?

MR. COLLIER: I'm getting drafted a lot, Senator. I'm going to try to walk through this -- I don't claim to have any expertise.

Senator, she needs to change paper.

[Interval. Reporter changing paper.]

MR. COLLIER: Mr. Senator, FmHA they analyse and process the loan documents. They make a decision to approve or disapprove the loan. If they decide to approve the loan and it involves trust lands -- and by statute we, as the trustee, are the only one that can approve the mortgage. So we do not get the full loan file before us. We get a document that purports to mortgage a piece of property.

SENATOR CONRAD: I hear what you are saying. What I hear you saying is that FmHA is the one that does the loan processing, and you don't have all the loan papers in front of you; therefore, you are assuming FmHA is handling its business appropriately as another fellow federal agency, and your ultimate responsibility is to approve the mortgage.

I guess, you know, from a dispassionate observer's point of view, if I were a trustee and I had a trust obligation, it would seem to me that my responsibility would extend beyond simply checking to see if the collateral offered in security for the mortage was reasonable or not.

MR. COLLIER: That's true, and we do do that, although we may not have the complete loan file package in front of us. If the land to be mortgaged seems excessive for the amount of dollars involved, then we start to sit down and talk with either with the loan applicant or our neighbors to the north, FmHA.

SENATOR CONRAD: I understand. The one sentence that troubles me -- and I'm still troubled by -- is this sentence: The Bureau does not review or conduct analysis on Farmers Home Administration loans -- and this is on trust territory that BIA is trustee for -- and maybe I'm missing something terribly here, but it would seem to me that the agency has some greater obligation as the trustee.

MR. COLLIER: Well, our approval of mortgages only applies when the land is in trust. I assume that there may be some of these operators that go out and borrow money for other lands that are not held in trust.

SENATOR CONRAD: But these are lands -- the lands that are at risk here, that have been the focus of this hearing, are all lands that are in trust, if I am not mistaken. Ray, am I wrong?

MR. RAYMOND CROSS: That's absolutely correct, Senator.

SENATOR CONRAD: What would be your analysis of the conversation you just heard?

MR. HAKENSON: In response to your question: Item 11 covers the question, our answer -- our answer to that. And basically, I guess, I had given some of the information to a higher level. And looking at it, as far as the working level here, for comparable agency to Farmers Home, on the Fort Berthold Reservation, if there is a sale of real estate mortgage involved, whether it is an Indian borrower on Indian trust land, the Bureau of Indian Affairs is provided documents such as the mortgage, the note, promissory note, Farm and Home Plan, and the letter narrating. And we know, in past experience, that they have reviewed it, they have turned down some mortages. We've discussed a number of them over the years.

SENATOR CONRAD: Then I'm even more troubled. Now you really got my temperature rising, because -- you can see why. I mean, what I've been told here is an experience --

Yes, sir?

MR. MANDAN: My name is Adam Mandan, and I'm former borrower of Farm Home --

SENATOR CONRAD: All right.

ADAM MANDAN: And when I first put in my chattel loan, the only thing that I mortgaged was what I bought. And so eventually I made another loan, and that's when Farm Home said we are not going to give you this loan unless you give us an assignment of income.

SENATOR CONRAD: Sure.

MR. MANDAN: So that's the catch there, and that there has nothing to do with borrowing to buy cattle, or whatever. That's just a cushion that they use to include all of these lands that we are talking about today. And that's the story behind that. I know that.

SENATOR CONRAD: That's your experience.

MR. MANDAN: Right.

SENATOR CONRAD: Right. We appreciate that.

Let me say that we literally now have run out of time, and we are going to be late for our next obligation in Tioga. So I'm going to have to stop here. If there are any last minute comments from members here, I see -- Alsace?

ALSACE LA FRAMBOISE: Yes, that's correct.

SENATOR CONRAD: You would like to make a comment?

ALSACE LA FRAMBOISE: Yes. Senator, in relation to what Mr. Hakenson said about the fact that, when we do our review of the mortgages, we look at the farm and home plan, we look at a current financial statement, and we try to determine whether there is repayability of that loan. In recent past we have had one occasion at the Fort Berthold Reservation where we knew that, you know, from one mortgage to the next, you could see where their financial network was starting to deteriorate. We've asked the borrower -- we've called the borrower, and we've said to them, "Do you understand that you may be in jeopardy, and do you still want to go through with this mortgage?" They have emphatically said, "Yes." So you have to realize that the Bureau is left in a very precarious position, because on the one hand, we are a trustee; but on the other hand we have a man, who is over 21 years old and a consenting adult, by his volition saying that I want to mortgage my trust land.

SENATOR CONRAD: Let me start out by saying what troubles me -- what I got back from Aberdeen saying the Bureau does not conduct analysis on the FmHA loans -- it sounds to me that currently we are doing that.

MR. COLLIER: The difference being between a loan approval and mortgage approval.

ALSACE LA FRAMBOISE: We looked at your letter in terms of loan analysis for actually approving. We are talking about reviewing the mortgage document and that process.

SENATOR CONRAD: Okay.

ALSACE LA FRAMBOISE: We do look at the farm and home plan.

SENATOR CONRAD: All right. That's fair. That's an important distinction to draw here. Thank you for that.

I'm sorry. We are just not going to be able to take further comments. If you have anything you would like to submit for the record, if you would submit it in writing, I'll see to it that it becomes a part of the record. I'm sorry we can't take any more time now, or we just won't make it to Tioga.

Let me thank all of you for participating here today.

MR. RAYMOND CROSS: Thank you, Senator.

SENATOR CONRAD: This has been a productive session for me, and I hope for all of us.

Thank you, Ralph, for coming. Thank you all for coming, and the representatives from the BIA for your being here as well.

Thank you.

[The proceedings were concluded at 6:10 p.m.]

* * * *

EXHIBIT 1

TESTIMONY OF MR. EDWARD LONE FIGHT, CHAIRMAN OF THE THREE AFFILIATED TRIBES, AT THE FACT FINDING FORUM ON INDIAN AGRICULTURE, CHAIRED BY SENATOR KENT CONRAD, ON SEPTEMBER 1, 1987

Senator Conrad, my name is Edward Lone Fight and I am the Chairman of the Three Affiliated Tribes. I want to welcome you to the Fort Berthold Reservation and to thank you for convening this fact finding forum regarding the Indian agricultural debt credit crisis and its potential devastating impact on Indian agriculture nationwide. The Three Affiliated Tribes share your deep concern about the potential loss through foreclosure, or by voluntary liquidation, of thousands of acres of reservation lands used by tribal members as collateral for obtaining Farmers Home Administration (FmHA) farm loans.

A March, 1987, Government Accounting Office (GAO) Report confirms, that absent Congressional intervention, the Great Plains Tribes' worst fears are soon likely to be realized. That report found that 351,166 acres of Indian lands are pledged by 370 tribal borrowers as security for FmHA farm loans. These 370 borrowers owe $49 million, in principal and interest, to FmHA. The GAO report estimates that 39%, or 144 of the borrowers are either in the foreclosure or liquidation process, or are likely to be foreclosed or liquidated soon. This is, as the GAO staff confirmed, a conservative estimate, and the real numbers could be considerably higher.

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Mr. Senator, this means that, across the 14 Great Plains agricultural reservations studied in the GAO report, thousands of acres of trust agricultural lands will be lost. The predictable result is that the general assistance rolls on these reservations will swell as the direct, and secondary, economic impacts hit the tribal population that is dependent on agriculture for their livelihood. Already strapped tribal economies will be be further undermined and tribal members will sink even deeper in the abyss of dependency on the Bureau of Indian Affairs for welfare handouts, rather than jobs.

The GAO report also shows that the two most vulnerable reservations are the Fort Berthold Reservation and the Cheyenne River Sioux Reservation in the South Dakota. That report indicates that 25,509 acres (out of 43,383 pledged trust acres) are likely to be lost to FmHA action on Fort Berthold. That report also indicates that 33,996 acres (out of 50,543 pledged trust acres) are likely to be lost to FmHA action on Cheyenne River.

The GAO report further shows the vulnerability of the agricultural tribal economies, which are not economically diversified, to these economic shocks. A severe economic dislocation - fed by inflation, depressed agricultural and livestock markets, and tight credit - has affected American agriculture generally. However, its effects are greatly magnified on the Indian reservations. State wide in North Dakota about 10% of the non-Indian borrowers are delinquent on their loans with FmHA. By comparison, the GAO report shows that 39% of the tribal borrowers - 4 times the non-Indian rate- are delinquent on their loans with FmHA.

The reasons for the vulnerability of Indian agriculture are not hard to find. The geographic and cultural isolation of the Indian reservations, coupled with severe jurisdictional conflicts, has effectively closed the private capital markets to the tribal people. This economic vulnerability is heightened by the fact that the federal government took the Great Plains Tribes' most valuable farm lands as settlement areas for non-Indians and left the tribes with only grasslands as the potential source of economic self sufficiency. Last, but not least, the agricultural tribes, and their members have struggled to carry out the treaty agricultural purposes of their reservations with virtually no technical assistance or guidance from the federal government.

Now in the eighties of the twentieth century, the Great Plains Tribes - especially Fort Berthold and Cheyenne River - once again face the loss of thousands of acres of trust lands to non-Indians. Mr. Senator, we are here today to ask your help in avoiding this result. The tribes' problems are modest, when compared to the massive farm debt crisis nationwide, but unless there is a focussed legislative solution tailored to the needs of the tribal farmers and ranchers this crisis will likely leave Indian agriculture permanently crippled. We believe there is one overriding factual cause that distinguishes this crisis in Indian agriculture: that is the complete failure of the federal trust responsibility mechanism to protect the Indians' most important asset - their trust agricultural lands.

The Tribes' modest legislative proposal, set forth below, recognizes that there is a unique federal trust responsibility owed to tribal farmers and ranchers. This proposed legislation will help preserve a nucleus of tribal farmers and ranchers who are good managers of their family farms and ranches. It also provides for meaningful tribal participation, consistent with the principle of Indian Self Determination, in the allocation of credit resources in Indian agriculture.

These legislative recommendations contemplate the following elements:

POINT 1. TRANSFER OF INDIAN DEBT TO BIA FROM FMHA FOR DEBT RESTRUCTURING PURPOSES.

The Three Affiliated Tribes recommend, because of the federal trust status of the pledged lands and the tribal borrowers, that the accumulated delinquent Indian debt of approximately $23 million should be transferred from FmHA to BIA. FmHA has told us that it recognizes no trust responsibility that it owes to either the pledged Indian lands or to the Indian borrowers. By contrast, BIA, as the trustee of both the Indian people and their lands, has the authority and responsibility to make direct loan funds, and technical assistance programs, available to qualified Indian debtors who would benefit from debt restructuring. We estimate, based on GAO's figures, that some 190 Indian borrowers nation wide are presently delinquent on their FmHA farm loans. We further estimate, based on FmHA *projections, that some 100 Indian borrowers may benefit from debt restructuring if their debt were "written down" to fair market value, and then refinanced through the proposed BIA program.*

This modest program, administered by the BIA, would provide a targeted nucleus of tribal farmers and ranchers the "second chance" they deserve. BIA, unlike FmHA, has a direct trust relationship with both the borrowers and their pledged assets. BIA as the long term "real estate managers" for tribal and allotted lands can provide direct assistance to the restructured debtors in relation to grazing fees, the redesign of economic grazing units and other help in making their lands more manageable and productive. This the FmHA cannot do.

Further the BIA would be obligated, under this proposed legislation to apply the same debt restructuring criteria as would be applicable by statute to non-Indian FmHA debtors. However, the Tribes also recognize that some Indian borrowers may prefer to remain with FmHA for purposes of debt restructuring, or to otherwise discharge their obligations with FmHA. For that reason the Tribes believe that the delinquent Indian debtors should be given the option, by notice and by affirmative election, to have their debts and the mortgages of the pledged trust lands transferred to BIA.

POINT 2. UTILIZE EXISTING BIA DIRECT LOAN AUTHORITY UNDER THE INDIAN FINANCING ACT, 25 USC §1451, FOR THE PURPOSE OFDEBT RESTRUCTURING.

The BIA already has the authority under the Indian Financing Act to provide direct loans to Indian borrowers for agricultural purposes. The Tribes recommend that a $10 million dollar *dedicated fund be established under that authority, through supplemental appropriations, for the purpose of the restructuring and refinancing, of the delinquent debts of qualified Indian borrowers who own and manage family farms and ranches. To be eligible, the Indian borrower's present debt to the federal government may not exceed $400,000, accumulated principal and interest. The Tribes estimate, based on FmHA projections, that approximately 100 Indian debtors may benefit from this program. The Tribes also estimate that the fair market "write down" value of the accumulated delinquent Indian debt of approximately $23 million dollars is about $9 million.*

POINT 3. THE ESTABLISHEMENT OF AN INDIAN AGRICULTURE TECHNICAL ASSISTANCE FUND TO BE ADMINISTERED BY BIA.

The Tribes believe, as stated before, that the past lack of technical assistance to the tribal farmers and ranchers has significantly contributed to the present agricultural crisis on the reservations. Consequently, the Tribes recommend that a special pilot program, funded at $5 million a year, for technical assistance to Indian Agriculture be established for three years. This limited technical assistance program is intended to provide an "incubation" period for selected, qualified tribal farmers and ranchers on the reservations. This pilot program, under the authority of the Indian Financing Act, would allow the BIA to provide direct loans or grants, not to exceed $200,000 in start up funding to new tribal farmers. That program, as its first priority, would be aimed at new tribal farmers and ranchers who have not previously received BIA or FmHA loans for agricultural purposes. The BIA would be required to provide *direct training and managerial assistance to these borrowers. This would include a mandatory training program and agricultural education for eligible tribal borrowers. The tribal farmers and ranchers would be eligible for a living stipend, not to exceed $300 a month, while they attended such training and education programs sponsored by the BIA for up to 24 months. Such training and education programs, as are needed to qualify the new tribal managers, may be provided by the tribal community colleges by contract with the BIA. The BIA would be required to consult with the Indian agricultural Tribes to ensure that programs tailored to their special needs are available.*

Further, tribal farmers and ranchers who have been in business for less than 15 years would also be eligible, as a second priority, for this program provided that any loan delinquency they may have with a BIA or FmHA administered farm loan program has been cured before their participation in the program is allowed.

POINT 4. FORECLOSED OR LIQUIDATED TRUST LAND IS TO BE ADMINISTERED BY THE SECRETARY OF THE INTERIOR ON CONSTRUCTIVE TRUST FOR THE TRIBES SUBJECT TO THE REDEMPTION RIGHT OF THE FOLLOWING INDIAN PERSONS.

Further, the Tribes recognize that a substantial number of tribal farmers and ranchers will not be eligible for debt restructuring for a variety of reasons. Those trust lands pledged as security by those borrowers will be forclosed, or liquidated, and the United States will acquire title to thousands of acres of trust lands. The Tribes recommend that the Secretary be directed to hold these lands on constructive trust, subject to a lien in favor of the United

States, on behalf of the Tribes in whose reservation those lands are located. The Secretary would be responsible to lease those lands and would credit the revenues received to the reduction of the attached lien in the amount of the debt. However, the following specified persons would have the right to redeem the lands, within one year from the date of foreclosure or conveyance, by payment of the fair market value, or capitalized value, of those lands which ever is less: (a) the former Indian owner; (b) the tribal family members of the former Indian owner.

The affected tribe would have the option, if these redemption rights fail, to purchase those lands by the payment of the capitalized value of the lands, or the remaining lienhold value, whichever is less. In any event, after the federal liens on these lands are discharged, beneficial title shall be vested in the affected tribe and the lands shall be held in trust by the United States on behalf of the affected tribe.

Mr. Senator this concludes my written testimony and I would be happy to answer any questions that you may have.

EXHIBIT 2

TESTIMONY OF MR. WAYNE DUCHENEAUX
CHAIRMAN OF THE CHEYENNE RIVER SIOUX TRIBE
AT THE FACT FINDING FORUM ON INDIAN AGRICULTURE
CHAIRED BY SENATOR KENT CONRAD,
ON SEPTEMBER 1, 1987

SENATOR CONRAD, CHAIRMAN LONE FIGHT, MY NAME IS WAYNE DUCHENEAUX, I AM THE CHAIRMAN OF THE CHEYENNE RIVER SIOUX TRIBE OF EAGLE BUTTE, SOUTH DAKOTA.

IT IS MY HONOR TO TESTIFY HERE TODAY ON THE PROBLEMS AFFECTING INDIAN AGRICULTURE THROUGHOUT THE NATION; PARTICULARLY, THE NORTHERN GREAT PLAINS. THERE ARE A FEW INDIAN TRIBES THROUGHOUT THE NORTHERN PLAINS THAT HAVE MINERALS AND OTHER NATURAL RESOURCES. HOWEVER, THE MAJORITY OF THE INCOME DERIVED FROM RESERVATION LANDS IS FROM AGRICULTURE. IT HAS BEEN ESTIMATED THAT INDIAN TRIBES THROUGHOUT THE NORTHERN GREAT PLAINS DERIVE NINETY (90%) PERCENT OF THEIR INCOME FROM THEIR AGRICULTURAL LANDS.

HISTORICALLY, INDIAN TRIBES HAVE BEEN ASKED TO GIVE UP MORE AND MORE OF THEIR LAND BASE TO MAKE WAY FOR THE CITIZENS OF THE UNITED STATES. ALTHOUGH MOST OF THESE "LAND GRABS" OCCURRED IN THE 1800'S, THE PRACTICE CONTINUES TODAY IN THE FORM OF SUCH ADVERSE ACTION AS FORCED LIQUIDATIONS, FORECLOSURES, AND VOLUNTARY LIQUIDATIONS. THESE SUCH ADVERSE ACTIONS COMPOUNDED BY THE COMPLETE FAILURE OF THE BUREAU OF INDIAN AFFAIRS' ABILITY TO ADMINISTER TRUST LANDS--THOUGH THESE ACTIONS ARE NOT CLASSIFIED A "LAND GRAB"--THE END RESULT IS THE SAME.

MORE RECENTLY, CHEYENNE RIVER AND FORT BERTHOLD LOST HUNDREDS OF THOUSANDS OF ACRES OF THEIR RESERVATION LAND BASE TO

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THE MAINSTREAM DAMS ON THE MISSOURI RIVER. PRESENTLY, UNDER THE REAGAN ADMINISTRATION, FARM FORECLOSURES ARE AT THE HIGHEST LEVEL SINCE THE GREAT DEPRESSION OF THE 1930'S. INDIAN TRIBES, LIKE CHEYENNE RIVER AND FORT BERTHOLD, ARE FACED WITH THE REAL AND PRESENT DANGER OF LOSING STILL MORE THOUSANDS OF ACRES OF RESERVATION LAND.

THE GAO REPORT PUBLISHED IN MARCH OF 1987 INDICATES THAT APPROXIMATELY 34,000 ACRES OF TRUST LAND ARE LIKELY TO BE LOST TO THE FARMERS HOME ADMINISTRATION ON THE CHEYENNE RIVER SIOUX RESERVATION. THE ECONOMY ON CHEYENNE RIVER, LIKE MANY OF THE NORTHERN INDIAN TRIBES, IS PREDOMINATELY AGRICULTURALLY BASED. THE RESERVATION ECONOMY IS ALMOST ENTIRELY PREDICATED ON FARMING AND RANCHING. ALL OF THE LAND LEASED ON THE CHEYENNE RIVER RESERVATION IS LEASED TO TRIBAL MEMBERS. THEREFORE, THE POTENTIAL LOSS OF APPROXIMATELY 34,000 ACRES OF TRUST LAND WOULD HAVE DEVASTATING ECONOMICAL IMPACTS BOTH ON THE LIVES OF INDIVIDUALS AND ON THE TRIBE. THE LOSS OF THE TRIBE'S AGRICULTURAL LAND BASE WILL RESULT IN THE FURTHER ESCALATION OF THE UNEMPLOYMENT RATE, WITH FURTHER DEPENDENCY ON GENERAL ASSISTANCE. THE CHEYENNE RIVER SIOUX TRIBE BELIEVES THAT THE BUREAU OF INDIAN AFFAIRS FAILED THE INDIAN TRIBES WHICH HAS LEFT THEM IN THE CRISIS THEY ARE IN TODAY--FACING THE LOSS OF THEIR AGRICULTURAL LAND BASE.

WE REALIZE THAT THE CONGRESS IS UNDERTAKING A MASSIVE ATTEMPT TO BAIL OUT THE NATION'S FARMERS AND RANCHERS. IN LIGHT OF THE EFFORTS CONGRESS IS PROPOSING, IN ORDER TO SAVE THE NATION'S FARMERS AND RANCHERS, THE REQUESTS MADE BY THE INDIAN TRIBES HERE, TODAY, ARE MINISCULE. YET, WHAT THE INDIAN TRIBES ARE PROPOSING WILL STABILIZE THE AGRICULTURAL ECONOMIES OF THE RESERVATIONS.

PRESENTLY, SIXTY (60%) PERCENT OF THE ENROLLED MEMBERS OF THE CHEYENNE RIVER SIOUX TRIBE LIVE ON THE RESERVATION. ACCORDING TO OUR OWN STUDIES AND STATISTICS, THE UNEMPLOYMENT RATE ON THE CHEYENNE RIVER RESERVATION IS EIGHTY-FIVE (85%) PERCENT. THIS, IN AND OF ITSELF, IS A CRIPPLING AND DEVASTATING FACTOR. THE UNIVERSITY OF SOUTH DAKOTA PUBLISHED A POPULATION UPDATE IN MARCH OF 1987. THIS STUDY INDICATES THAT THE INDIAN POPULATION ON CHEYENNE RIVER, ENCOMPASSING TWO COUNTIES, IS EIGHTY-THREE, POINT SEVEN (83.7) PERCENT. THIS SAME STUDY STATES THAT ZIEBACH COUNTY, ONE OF THE COUNTIES ON CHEYENNE RIVER, RANKS AS ONE OF THE POOREST COUNTIES IN THE NATION, WITH THE LOWEST PER CAPITA INCOME IN THE COUNTRY.

THE UNEMPLOYMENT RATES AND POVERTY LEVELS ON INDIAN RESERVATIONS ARE ENORMOUS AND BLEAK. HOWEVER, IF INDIAN TRIBES ARE, YET, FACED WITH THE FURTHER LOSS OF THEIR LAND BASE--WE MAY NOT SURVIVE, ALONG WITH THE NATION'S FARMERS AND RANCHERS, IF CONGRESS IS NOT WILLING TO ASSIST THE INDIAN TRIBES.

SENATOR CONRAD, THE CHEYENNE RIVER SIOUX TRIBE OF THE CHEYENNE RIVER RESERVATION AND THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION ARE SEEKING YOUR SUPPORT OF THE FOLLOWING PROPOSED LEGISLATIVE LANGUAGE:

SECTION____________________

(a) WHERE THE SECRETARY HAS ACQUIRED, OR SHALL HEREAFTER

ACQUIRE, ANY LAND PURSUANT TO THIS CHAPTER (CHAPTER 50, TITLE 7, U.S.C.) WITHIN THE EXTERIOR BOUNDARIES OF ANY INDIAN RESERVATION, SUCH LAND SHALL BE ADMINISTERED AS PROVIDED IN THIS SECTION.

(b) THE SECRETARY SHALL, WITHIN 180 DAYS AFTER THE DATE OF ENACTMENT OF THIS SECTION FOR LANDS ACQUIRED PRIOR TO ENACTMENT OF THIS SECTION AND 180 DAYS AFTER THE DATE OF ACQUISITION FOR LAND ACQUIRED SUBSEQUENT TO THE DATE OF ENACTMENT OF THIS SECTION, AFFORD AN OPPORTUNITY TO REDEEM THE LAND, IN ORDER OF PRIORITY, TO THE FOLLOWING PARTIES--

(1) THE ORIGINAL OWNER;
(2) THE IMMEDIATE FAMILY MEMBERS OF THE ORIGINAL OWNER; AND
(3) THE INDIAN TRIBE WITHIN WHOSE RESERVATION SUCH LANDS ARE LOCATED.

(c) IF THE INDIAN TRIBE IS UNABLE TO REDEEM THE LAND PURSUANT TO THIS SECTION (b), THE SECRETARY SHALL TRANSFER SUCH LANDS TO THE SECRETARY OF THE INTERIOR WHO SHALL ADMINISTER SUCH LANDS AS IF THEY WERE LANDS HELD IN TRUST FOR THE UNITED STATES FOR SAID INDIAN TRIBES.

(d) ALL LEASE RENDERED OR OTHER INCOME FROM LAND TRANSFERRED TO THE SECRETARY OF THE INTERIOR PURSUANT TO THIS SECTION SHALL BE DEPOSITED IN THE MISCELLANEOUS RECEIPTS OF THE UNITED STATES TREASURY UNTIL SUCH TIME AS ANY OF THE FOLLOWING THREE (3) CONDITIONS HAVE BEEN SATISFIED, WHICHEVER IS THE LESSER AMOUNT:

(1) FULL SATISFACTION OF THE OUTSTANDING LIEN OF THE UNITED STATES; OR

(2) PAYMENT OF THE FAIR MARKET VALUE OF SAID LANDS; OR

(3) PAYMENT OF THE CAPITALIZED VALUE OF SAID LANDS.

PURSUANT TO THIS SECTION, INTEREST CHARGES SHALL NOT ACCRUE AND SHALL BE DISCONTINUED FROM ANY OUTSTANDING LIENS OF THE UNITED STATES GOVERNING SAID LANDS HEREIN AS OF THE DATE OF THE ENACTMENT OF THIS SECTION. EFFECTIVE WITH SATISFACTION OF SUCH LIEN, TITLES OF SAID LANDS SHALL BE HELD IN TRUST BY THE UNITED STATES FOR THE BENEFIT OF THE INDIAN TRIBE WITHIN WHOSE RESERVATION SAID LANDS ARE LOCATED.

(e) NOTWITHSTANDING THE PROVISION OF SUBSECTION (d), THE INDIAN TRIBE WITHIN WHOSE RESERVATION THE ACQUIRED LANDS ARE LOCATED MAY, AT ANY TIME AFTER THE LANDS HAVE BEEN TRANSFERRED TO THE SECRETARY OF THE INTERIOR PURSUANT TO THIS SECTION, OFFER TO PAY ANY REMAINING AMOUNT OF THE LIEN, THE FAIR MARKET VALUE, OR THE CAPITALIZED VALUE OF THE LAND, WHICHEVER IS THE LESSER AMOUNT, AS DETERMINED PURSUANT TO SUBSECTION (d) AND, UPON PAYMENT OF SUCH AMOUNT, TITLE TO SUCH LAND SHALL BE HELD BY THE UNITED STATES FOR SAID TRIBE.

MR CHAIRMAN, THIS CONCLUDES THE TESTIMONY OF THE CHEYENNE RIVER SIOUX TRIBE.

EXHIBIT 3   August 31, 1987

Mr. Chairman, members of the committee, it is my pleasure to submit this written testimony on S1665.

My name is Dennis Huber, I'm an enrolled member of the Three Affiliated Tribes, Fort Berthold Reservation. I'm married and we have four children. Presently, I'm Director of the Minority Business Development Center at United Tribes Technical College in Bismarck, North Dakota, and my wife teaches English there.

We own and operate Huber's Simmental Ranch Twin Buttes, South Segement of the reservation. Our farm/ranch operation was established in 1973.

Our farm operation consists of 500 acres of wheat, oats and barley, 450 acres of alfalfa hay land producing 900 ton of feed and 100-200 acres of corn silage producing 800-1600 ton of feed. Annually, we produce more than enough feed for our livestock operation. Our wheat yields consistently average 25-30 bushels per acre which is 5-10 bushels above the county average.

Our livestock operation consists of approximately 360 cows of which 60 are purebred registered Simmental cows. We raise purebred Simmental bulls for our own use and for sale to commercial and purebred livestock breeders.

We developed our crossbreeding program in 1980 utilizing Simmental bulls on Angus based cows. The main purpose was to produce a heavier calf at weaning and to produce a product that contained less fat and was more desirable to the consumer. The result was Simmental/Angus cross calf that contains the desirable lean characteristics. Our calves consistently bring top dollar at the local auction market.

Like alot of farmers and ranchers, both on and off the reservation, our farm/ranch operation is in trouble with FHA. There are a number of reasons for this and the main one that we hear from FHA is that "We are poor managers". How can we be poor managers when we consistently out produce everyone in the county in grain and livestock. I cannot help it if the price of wheat went from $5.00 per bushel in 1980 to $2.00 per bushel in 1986-87 and calves went from $1.00 per pound in 1979 to $.50-.60 cents per pound in 1985-86. I don't see how we can be called "poor managers" because of this. The government has always advocated a cheap food policy at the expense of the farmer and rancher. The people getting rich off our products are the middlemen and retailers. We even have to pay our own freight on our wheat from Western North Dakota to Minneapolis and this amounts to about $.80 per bushel. Have you ever heard of anything so ridiculous?

Now when the good years in the livestock industry approach FHA wants to close the door on us and take our land and cattle and put us out of business. I don't know how you could measure the devastating effect, in terms of dollars, this would have on our reservations economy and especially our people. Large blocks of land are unleased now and putting about 50 ranchers out of business would compound the unleased land problem. Our people rely on lease income for their family living needs. Some families live totally off their lease income. The welfare that would result would be more than double the cost of a debt writedown by FHA. Our Tribal government would lose about a third of it's lease income, again causing lay-offs and more despair, relocation and welfare for our people. I think our reservation suffered enough and our people sacrificed enough when the government built the Garrison Dam and took our most productive land.

EXHIBIT
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We were promised many things, and to date, none of them have been honored. Now, the Federal Government wants more land through FHA fore closures. It intends to sell our choice farm land and lake shore property to the non-Indians at a considerable lower rate than the fair market value. It's time for Congress to stop this taking and re-establish our self-esteem and self-sufficient life style that we enjoyed prior to the Garrison Dam. We were a proud people at that time, living off the land and enjoying a prosperous lifestyle.

We could achieve this again with a little cooperation from our local FHA office. Most cattlement in financial trouble would cash flow their debt if it was more reasonable, lower interest, and a longer pay-back time period. FHA is supposed to help borrowers stay on the land.

Most of the debt that has accumulated throughout the 80's is interest. FHA was supposed to be a "lender of last resorts" with low interest rates, but what happened when interest rates went to 20 plus percent? FHA revised theirs to 16 plus percent and only lowered them recently. I still have a large note at 14%. Why weren't we considered limited resource lenders so our interest rates would have remained low? (7% or less) Also, we don't get a lot of assistance of management help from our local office on what services (deferrals, limited resourc, debt set aside and etc.) are available to us to help prevent or overcome some of our financial problems. We had to learn about our rights from other farm groups off the reservation. Now, we learn that we should have been eligible for limited resource loan all along. The only time FHA staff comes to my ranch is to count my cattle and machinery and have me sign a new security agreement and then leave. If I have problems and I want to see them they are available only one day a week to discuss problems. My banker makes himself available to me every day of the week.

When a person does get a chance to meet with them he's treated with disrepect and humiliated because he cannot fill out the forms properly.

On our reservation, agriculture is the only business that produces significant income to impact employment and economic development. We don't have any large industrial employers or do our people own the major businesses on the reservation. We don't own any banks to initiate business or economic development enterprises. Our only and largest industry is agriculture. Our people have always lived off the land and in harmony with nature and therefore, it's important to keep the farmers and ranchers on the land.

The solution to the farmers and ranchers financial problems are very simple and not very costly:

(1.) The BIA has the "Trust Responsibility" over all reservations lands and therefore should be the lender and mortgagor on land and chattles. They have a credit program under the "Indian Finance Act" that provides direct loans, 90% guarantees, and 40% grants to promote and enhance business and economic development on reservations. FHA could transfer the debt to the BIA for administration and collection or utilize a direct buy-out of FHA debt by the BIA at a capitalized rate that would cash flow farm/ranch operations. The BIA would be responsible for making direct annual operation loans. The solution would be a single debt transfer without having individual farmers and ranchers liquidate all their assets to satisfy FHA regulations on debt settlement. This would be a more expeditious debt settlement procedure.

(2.) A private lending institution could apply for a BIA 90% guaranteed loan to buy-out the FHA debt at a capitalized rate and administer the loan for collection and payment to the BIA. Again, the local financial institution would be responsible for making annual operating loans to Indian Clients. This could be a method in which the tribe could start it's own bank.

I would estimate the total cost, for our reservation, at less than $5,000,000 provided the restructuring of the debt is based on a Capitalized formula and not a fair market value. If the Tribe is going to be able to buy foreclosed land at the capitalized rate then the Indian farmers and ranchers should have the same opportunity to restructure their debt. Farm/ranch operations have to cash flow or all our efforts are in vain.

Lastly, if FHA implements the risk assessment ratio to determine client eligibility for funding, all Indian borrowers would be denied access to future FHA funds to continue their operation. Another reason for debt settlement.

This concludes my written testimony and I urge the committee to consider all of the above and give favorable treatment to S1665.

EXHIBIT 4

Good afternoon Honorable Chairman, Honorable members of the Indian Farm Financing Fact Finding Forum, honored members of the Tribal Councils and guests.

I am Kenneth J. Fredericks Sr. and I want to thank Senator Conrad and the Tribe for giving me this opportunity to present testimony today on the status of Indian Agriculture and credit practices of the FmHA and BIA.

I would like to begin my testimony with a general overview of the past experiences our Fort Berthold Farmers and Ranchers have had to go through during the past three and one half decades. I am sure you will appreciate the relation this overview has to bringing us to the current status of our Indian agriculturalists. I am also taking this opportunity to include a copy of the testimony I gave to the joint Tribal Advisory Committee when they were conducting hearings on the impacts of the Garrison Dam on the Fort Berthold People.

I begin with the general overview; Indian tribes and tribal members who live in the upper great plains traditionally make a livelihood from the agricultural natural resources their reservation lands provide. The basic economic categories of Indian people living on these reservations are largely (1) farmer/rancher; (2) government employee (federal/tribal); and (3) general assistance client. Through past efforts by the federal government and economic necessity many of the Indian farmers and

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ranchers have expanded their operations by leasing other allotted lands and tribal lands besides using their own allotments. Some reservations boast that over 90% of their land base is Indian operated. These land leases of allotted lands are acquired by Indian ranchers through the Bureau leasing program for trust lands with minimal tribal input. The Bureau leasing programs are designed to operate on a sustained yield basis with rates comparable to the lands outside the reservation. There is no concern for the true economic production for each tract in establishing a lease rate, it is based on comparable or open bid amount in non-Indian transactions. Likewise, when Indians were buying land to consolidate their holdings which were fragmented by the federal taking of Indian lands in the high plains area for Pick-Sloan plan dams, the Bureau started a land appraisal program. This program came too late and was of no help to the Indians when their bottom lands were appraised for an unconscionable low value by the Corps of Engineers. Methods used in the Bureau land appraisal program resulted in land being valued at comparable worth based on non-reservation transactions rather than the value of production from each tract. Indians buying land at this rate destroyed the fragile economic balance that sustained their operations in normal times. Many Indians also bought additional lands and chattels when FmHA funding become available. Tribes also availed themselves of land acquisition loans and purchased lands from members in order to hold the tribal land base intact. These lands were overvalued and all knew it but the reason they were purchased was to protect the land base of a farm/ranch in the case of individual purchases; and to protect the tribe's reservation land base in the case of tribal purchases. The current status of trust mortgages is attached.

The Bureau of Indian Affairs curtailed the operation of its Indian agricultural credit programs from 1960 through the 1980's. During this period Indian agriculturalists were encouraged to use "outside" credit sources such as the Production Credit Administration, commercial banks Federal Land Bank and Farmers Home Administration. This arrangement sufficed during the normal period, however many emergency loan programs and uneconomic practices set the stage for what was to follow. Indian operators in an attempt to provide their own credit services formed the "American Indian Agricultural Credit Consortium". A profile is attached for information.

The economic effect of a dramatic increase in energy prices, the downturn in the agricultural economy, together with over leveraged operations and higher lease prices became evident in the mid-seventies. Impact of these factors soon put the economically and politically fragile Indian agriculturalists in delinquency with their lenders. Indian ranchers and farmers were the first to be cut off by the "outside lenders". Many reasons were given for this action but the most prevalent being the jurisdictional issues encountered during replevin or foreclosure actions. Court cases were tried such as "Smith vs. PCA" and others which were widely publicized to the extent that lenders are just not making loans to Indians for agricultural purposes, meanwhile, the tribes who depend on lease payments to function and pay their obligations are not receiving this revenue. The trust lands released from Indian lessees have been advertised on the open market for non-Indian and Indian bid and apparently no one was interested in leasing these lands, as no bids were received. The lands are currently idle and tribes are asking the trustee for assistance. Individual Indian members who operate ranches and farms are asking for a source of credit to make their units produce and participate in the option available from primary lenders, mainly to purchase their mortgaged property at fair market value. This would free the borrower from over leveraged loans and allow them to restructure their obligations with more realistic cash flows. It is agreed that in order to lend credibility to our proposals we must review and evaluate the agri-business economy in Indian country with an objective of making this business more economically sound and labor intensive.

Currently there are no credit resources available to the Indian ranchers and farmers. It is apparent that the current Bureau of Indian Affairs credit policy does not include Indian agriculture. Tribes are experiencing severe cash flow problems because of unleased or unpaid leases of their agricultural trust land base. No economic adjustments have been made by the leasing agent (trustee) to reflect the downturn in agriculture and keep our lands competitive for leasing. I have attached a letter and short cronology of events from American Indian Agricultural Credit as an example of what I said. The result of this lack of concern is; Indian operators without short term credit cannot keep their ranches and farms in production and as a result are going deeper in debt each year and the value of their collateral continues to decline through depreciation.

The BIA has failed to recognize their trust responsibility to protect the trust land base held for Indians. Farmers Home Administration and other outside lenders holding trust land mortgages are willing to write loans off at fair market value of current collateral provided borrowers can find alternate financing. Indians have no source of credit to avail themselves of this opportunity to resolve threat of foreclosure.

Over one million acres of trust lands in the high plains area are currently subject to the threat of foreclosure action. I have included documentation in the written submission to substantiate this fact. If Indian ranchers and farmers are allowed to be put out of business by not putting up some program to provide assistance, we can expect our general assistance funding requirements to grow by at least 2,000 families. This number of families multiplied by an average of five members comes up to 10,000 additional GA clients. 10,000 GA clients times 99.00 per month is 990,000 dollars a month times 12 months is 11,880,000 dollars per year. So you see these problems belong to all of us interested in or charged with protecting trust property and improving the quality of life of Indians on our Indian reservations!

RECOMMENDATIONS

The Three Affiliated Tribes strongly supports the contention that the BIA is required to provide continued support for the Indian use of Indian resources. I include 25 USC §1451 found in Section 1 of PL 93-262 for reference. The basic use of these resources in the high plains area is agriculture, therefore the BIA should provide the same level of services for our trust land resources as they are currently providing for energy resources, forestry, fisheries and water. We also note that over 13 million acres of the trust land base in the high plains are Billings and Aberdeen.

The Three Affiliated Tribes stand ready to work with Federal, Tribal and State Governments as well as the Congress to effectively develop the credit and technical resources to restore a balanced method to utilize our natural resources through agriculture. This may require many new approaches to the Indian agri-business practices such as capitalization, processing, and marketing of our agricultural industry products on our reservation. Once this capability and credit resources are in place and functional the Tribe could set up an appropriate entity to ensure the sound operation of what has been established. This may well be a recognized banking institution.

During this period we need to work with lenders to establish a mediation period and hold in abeyance their pending foreclosure actions on trust lands. All parties would hold paramount the need to keep the lands in trust and agree to a provision for lenders to realize the fair loan value of the collateral held by the lender at the beginning of said mediation period.

We also recommend that the Bureau support efforts by the Tribe to develop a financial infrastructure within and outside the tribal government to interface with the state and national banking industry. The long term objective would be to participate in development of a banking and lending facility with a primary focus of developing a capacity to provide agricultural credit for the high plains tribes. A necessary short term objective would be to use existing capabilities to provide technical assistance and help the operators stay in a business with short term production loans to meet operating needs. In many cases the primary lender could release collateral to make operating funds available where they can be assured that their client is receiving assistance in restructuring operations. One such capability currently in place is the American Indian Agricultural Credit Consortium headquartered in Billings, Montana with many Indian clients in North and South Dakota, Nebraska as well as in Montana. Reference to the Consortium's loan profile which has been attached for information shows funding to provide operating funds for production loans could be made available from the current Bureau of Indian Affairs direct loan funds. As was pointed out, every effort would be made to get the primary lender to release funds from production receipts to meet production costs. In some cases an operator may need to borrow in order to pay leases for the coming year. This will help stabilize the operators as well as assist the tribes and allottees by keeping their lease revenues intact. This short term objective needs to be implemented this fall or lease revenues will not be available to the tribes and allottees, and many operators will have to give up their operations.

Attached is an abbreviated list of actions required by Congress, Bureau of Indian Affairs, Tribes, Lenders, and Indian Clients, which would bring about the necessary agricultural credit program. It is necessary that these recommendations be taken seriously and implemented on a crisis basis. We do not want to see the capacity and capability of our Indian users of the trust land base disappear altogether.

As for recommendations on how you can help us I am going to read a resolution proposed to the Tribal Council which incorporates the needed consideration by Congress to provide funding and necessary changes to federal agency regulations and policy to facilitate access of Indian clients to buy out and debt settlement provisions of the FmHA and BIA. I have inserted a copy of this resolution for furture reference.

One further thought, is that it will be beneficial to allow immediate family members the opportunity to buy out or debt settle a family members' debt to enlarge an uneconomic operation and make it cash flow. In some cases the family member has moved on and the property is essentially idle or in marginal use by another family member.

Mr. Chairman, I thank you for this time and sincerely hope that our efforts here today can result in congressional and administrative activities which will bring relief to our most pressing problem on the Indian Reservation in the high plains county. Thanks again.

ATTACHMENTS

AIACC - Loan Profile

Loans are carried in two categories.

I. North Dakota/Montana - covers member tribes on reservations in Montana and Ft. Berthold in North Dakota. Montana tribes include Crow, Northern Cheyenne, Fort Peck, Blackfeet, Rocky Boy and Fort Belknap.

Portfolio consists of 72 loans for a total amount of $2,574,021.17

II. South Dakota - member tribes in South Dakota include Oglala Sioux, Rosebud Sioux, Standing Rock Sioux, Cheyenne River Sioux, Sisseton/Wapeton Sioux, Crow Creek Sioux and Lower Brule Sioux.

Portfolio consists of 94 loans for a total amount of $2,236,167.49

All of the above loans are made to Indian farmers and ranchers residing and doing business on their respective reservations. Because of the continued depressed economic and weather conditions the outlook shows limited borrower capacity to reservice this debt and interest.

TRUST LANDS PRESENTLY UNDER MORTGAGE IN THE ABERDEEN AREA

	No. of Mortgages	Acres	Amount	Private Lender (Individual)	PCA	FmHA	Commercial Lender (Banks, etc.)	Federal Land Bank	Indian Credit Corp.	SBA	BIA
C. River	175	139,729.13	$14,313,981.01	78,000.00	4,103,327.95	6,929,740.00	738,457.68	1,350,000.00	58,255.38	326,900.00	729,300.00
Crow Creek	17	9,336.88	885,303.75	.00	.00	442,780.00	286,722.00	46,100.00	.00	.00	109,701.75
Lower Brule	8	1,763.15	386,600.00	.00	52,000.00	58,700.00	150,000.00	28,000.00	.00	77,100.00	20,800.00
Fort Totten	1	35.20	2,700.00	.00	.00	2,700.00	.00	.00	.00	.00	.00
Winnebago	0	.00	.00	.00	.00	.00	.00	.00	.00	.00	.00
Sisseton	16	858.98	425,659.60	.00	.00	91,810.00	218,573.86	.00	115,275.74	.00	.00
Rosebud	42	11,623.24	1,731,044.64	.00	.00	952,500.00	712,044.64	22,500.00	.00	44,000.00	.00
Yankton	28	580.12	809,340.00	5,000.00	.00	329,140.00	475,200.00	.00	.00	.00	.00
Turtle Mt.	32	371.09	805,648.00	.00	.00	234,650.00	115,698.00	9,000.00	.00	66,000.00	380,300.00
St. Rock	127	53,496.60	3,519,331.46	.00	24,099.88	2,969,222.05	129,315.63	86,000.00	310,693.90	.00	.00
Ft. B.	271	98,598.49	13,615,847.19	.00	161,129.52	11,833,200.92	469,785.50	606,700.00	252,920.58	45,000.00	197,110.67
Pine Ridge	264	161,310.69	9,483,054.47	196,339.50	1,560,320.01	3,833,501.79	1,665,633.71	1,898,700.00	113,559.46	215,000.00	.00
TOTALS	981	477,703.57	45,978,510.12	279,339.50	5,900,877.36	27,727,944.76	4,961,431.02	4,047,000.00	850,705.06	774,000.00	1,437,212.42

10/22/86

INDIAN TRUST LAND USE - ABERDEEN AREA

RESERVATION	TOTAL ACREAGE	NON-INDIAN FARM USE IRRIG.	NON-INDIAN FARM USE DRY LAND	INDIAN FARM USE IRRIG.	INDIAN FARM USE DRY LAND	NON-INDIAN GRAZING	INDIAN GRAZING	NO. OF INDIAN OPERATORS	NO. OF LIVESTOCK PERMITTED TO INDIANS
PINE RIDGE	1,788,864	NOT AVAILABLE BY RESERVATION		NOT AVAILABLE BY RESERVATION		242,200	1,419,300	250	30,500
ROSEBUD	957,131					129,200	522,900	100	14,200
FT. BERTHOLD	419,518					13,900	221,900	68	9,500
CROW CREEK	129,023					20,000	114,500	21	4,800
CHEYENNE RIVER	1,395,729					9,000	1,200,400	200	25,600
STANDING ROCK	849,983					171,800	715,300	150	23,700
LOWER BRULE	130,399					-0-	120,700	21	4,800
FT. TOTTEN	53,463					NA	NA	NA	NA
YANKTON	36,641					NA	NA	NA	NA
SISSETON	108,138					NA	NA	NA	NA
SANTEE						NA	NA	NA	NA
TURTLE MOUNTAIN	33,102					NA	NA	NA	NA
TOTALS	1/ 5,901,991	5,778	304,159	12,565	164,455	584,100	4,615,000	810	113,500

1/ On Reservation Tribal and Allotted Lands Only

140.12 Average
Number of Head
Per Operator

OCTOBER 1986
K. FREDERICKS
C. OWENS, AAO

INDIAN TRUST LANDS PRESENTLY UNDER MORTGAGE IN THE BILLINGS AREA

Agency	Individual Loans	Acres	Totals	PCA	FmHA	Banks	FLB	AIACC	CCC & SBA
Blackfeet	154	113,577	$18,248,756	$ 6,366,290	$ 6,579,270	$3,229,896	$2,048,300	$ -0-	$25,000
Crow	143	101,105	9,100,083	316,660	1,614,744	4,539,898	2,414,500	214,281	-0-
Flathead	35	8,118	2,173,559	412,497	909,236	207,326	644,500	-0-	-0-
Fort Belknap	175	70,415	7,628,604	781,954	4,416,923	943,437	1,486,290	-0-	-0-
Fort Peck	22	29,393	5,710,546	786,139	1,654,540	636,660	2,517,799	76,398	39,010
No. Cheyenne	33	12,655	3,076,037	1,656,902	1,226,130	-0-	-0-	193,005	-0-
Wind River	17	1,696	898,116	-0-	295,230	397,386	205,500	-0-	-0-
Non-Bureau Lenders	579	336,959	$46,835,701	$10,320,442	$16,696,073	$9,954,603	$9,316,889	$483,684	$64,010
Revolving Credit Loans		40,490	$ 5,335,563						
Total Individual Mortgages		377,449	$52,171,244						

TRIBAL LAND ACQUISITION LOANS FmHA

	Acres		**Tribal Credit Program Loans	Acres	Loan Amount - No Real Estate Mortgage
Blackfeet	56,515	$ 4,891,000	$1,421,524	10,368	$1,100,000
Crow	39,834	4,548,000	835,730	11,577	970,000
Fort Belknap	-0-	-0-	898,689	8,319	-0-
Fort Peck	68,692	6,000,000	1,092,640	6,799	-0-
No. Cheyenne	* 9,464	250,000	417,037	3,000	926,950
Wind River	10,139	2,500,000	669,943	427	-0-
Totals	184,644	$18,189,000	$5,335,563	40,490	$2,996,950

* No Real Estate Mortgage
**BIA Revolving Fund

TOTAL TRUST LAND MORTGAGED IN THE BILLINGS AREA

Acres	562,093
Mortgage Amount	$70,360,244
Amount Per Acre	$125.18

updated 10-16-86

INDIAN TRUST LAND USE - BILLINGS AREA

RESERVATION	TOTAL ACREAGE	NON-INDIAN IRRIG.	FARM USE DRY LAND	INDIAN IRRIG.	FARM USE DRY LAND	NON-INDIAN GRAZING	INDIAN GRAZING	ALLOTTEE & & TRIBE MISC. NON-AG USE	NO. OF INDIAN OPERATORS	NO. OF LIVESTOCK PERMITTED TO INDIANS
BLACK FEET	937,838	11,084	98,668	14,358	60,846	41,115	601,501	110,266	186	18,779
CROW	1,521,616	22,204	282,350	5,157	32,400	638,668	453,644	87,193	101	10,648
FT. BELKNAP	617,488	2,044	20,122	16,073	98,168	97,796	347,276	36,009	112	6,846
NO. CHEYENNE	436,948	-0-	325	2,078	22,300	2,904	349,322	60,019	69	6,030
FT. PECK	909,388	26,057	106,522	7,687	155,072	395,117	207,913	11,020	69	5,350
ROCKY BOY	108,015	-0-	160	554	8,533	-0-	96,345	2,432	51	2,375
WIND RIVER	1,888,560	8,212	-0-	26,706	-0-	5,691	1,602,449	245,502	96	22,283
TOTALS	6,419,853	69,601	508,147	72,613	377,319	1,181,291	3,658,450	552,432	684	72,311

105.72 Average
Number of Head
Per Operator

OCTOBER 1986
K. FREDERICKS
B. SWICK, BAO

Indian Credit Corporation

August 12, 1987

Kenneth Fredericks
106 Barcelona Drive
Boulder CO 80303

Dear Ken:

As a loan client, business associate, and friend of Indian Credit Corporation, you are well aware that this Company has experienced a cash shortage since January 1st, that has worked a hardship on everyone associated with this Company.

Accordingly, we need, at this time, to request our directors, borrowers, and friends to bring pressure upon the Bureau of Indian Affairs to render assistance to this Company in order that we may generate sufficient cash operating capital to service the needs of the loan clients that we have, service our debts, and pay our bills. Late in April of this year, the Assistant Secretary of Interior sent a personal representative to Billings in order to assist this Company in making BIA 90% Guaranty loans available through local banks to our customers in order for this Company to generate operating and debt servicing capital for the remainder of the year. A letter to me from the Deputy Assistant Secretary for Trust Economic Development on May 26, 1987, verbalized this committment. As of this date, that committment has not been carried out.

Attached herein, you will find a chronology of the events surrounding these circumstances. We respectfully request that you contact the Congressional delegate of your choice with this information, either by telephone, a letter of your own writing, or by telegraph.

Any assistance in this matter is sincerely appreciated.

Yours truly,

INDIAN CREDIT
CORPORATION

Jim Altenhofen

Jim Altenhofen
President and
Chief Executive Officer

Enclosure
JA/kw

404 North 31st Street, Suite 220 • P.O. Box 7053 • Billings, Montana 59103-7053 • (406) 256-2188

CHRONOLOGY
OF
EVENTS

1987 - INDIAN CREDIT CORPORATION

JANUARY - Indian Credit Corporation had a borrowed annual loan disbursement and operating expenses on a revolving line of credit in the neighborhood of $350,000 - 500,000 each year since 1983 from American Indian National Bank, Washington, D.C. In January, we made application to renew our line. Initially, action on our loan renewal was stalled due to the fact that the President and Chief Executive Officer of the Bank both had left their positions.

MARCH - Early in March, the Company was informed by the American Indian National Bank that the Bank was, in fact, in the final stages of sale to other parties and would no longer be engaged in business with Indians outside of the Washington, D.C. area. Indian Credit Corporation immediately made application to the Bureau of Indian Affairs for a U.S. Direct Loan in the amount of $500,000 to be used for operating capital and loan disbursements to our clients, and to be repaid in full on or before December 31, 1987. An extension on the annual payment due to First Interstate Bank of Billings by Indian Credit Corporation on a 90% BIA Guaranty term loan was obtained.

APRIL - On April 27, 1987, Bureau of Indian Affairs Central Office informed Indian Credit Corporation that the U.S. Direct Loan application had been denied. However, the BIA Central Office stated that at the Assistant Secretaries instructions, the BIA would give our customers priority utilization of BIA Guaranty authorities available for agricultural loans in the Billings and Aberdeen areas. A representative of the Central Office was sent immediately to Billings to assist in this endeavor. One bank in Montana, one in Nebraska, one in North Dakota, and two banks in South Dakota stand willing to make 90% Guaranteed loans to Indian Credit Corporation customers. These loans would pay Indian Credit Corporation out, provide adequate source of financing to the borrowers, and would have generated sufficient capital for the operation of this Company, and loan disbursements to the remaining clients. Five Guaranty loans were approved to clients in May. One Guaranty loan to a borrower was closed in June. No action has been taken from the BIA on any of the other Guaranty loan application.

SUMMER - A number of loyal member borrowers with small loans obtained financing from banks without utilization of the Guaranty loan program in order to help this Company provide operating expenses to the rest of the clients and pay the bills. We appreciate the efforts of these loyal borrowers, however, we did not want to lose them as customers, nor do we feel that they should have been forced to leave us due to a lack of funds. During the spring and summer months, First Interstate Bank of Billings has also placed great pressure for payment on this Company.

This Company and its members have never asked for handouts. All we ask is that the BIA be pressured into honoring its previous committments to this Company.

Congress and Administration	Make 300,000,000 dollars available for upper great plains Indian Tribes to be used for restructuring and re-aligning individual Indian agricultural loans so that the Indian trust land base can be preserved and enhanced, in accordance with the trust responsibilities of the United States Government. This would include the necessary technical assistance and technical services to insure the protection of trust lands and trust land resources.
BIA Area Offices	Work with tribal and inter-tribal groups to produce an approved plan which will effectively accomplish the purpose and intent the Congress and Administration have in making these funds available. Provide resources to facilitate development of a comprehensive agricultural credit plan that will resolve the current problem in trust land mortgages. Develop a capacity to provide full services for operation of the credit plan.
Tribes and Inter-tribal Entities	Develop a proposal for participation of Tribes and tribal members in the operation and management of a comprehensive agricultural credit program including provision of technical assistance required to fulfill the trust responsibilities of the Federal Government to enhance, manage, and protect the trust lands and trust land resources.
Indian Operators and Loan Clients	Work with respective Tribes and credit entities in development of an operational plan to meet credit needs. Cooperate with the recognized entities in making a proper inventory and assessment of your respective operations. Work closely with the specialist assigned to provide you with technical assistance in restructuring your loans and/or re-aligning your operation. Attend local seminars as necessary to expedite the disemination of information vital to resolving collective problems.
Local Agency BIA and FmHA Offices - Other Credit Entities	Provide loan client data and support as requested by technical assistance contractors in a timely manner. Bureau of Indian Affairs Officers will make information on individual loan clients land leases available including grazing permits upon request by T.A. Contractors with concurrence of respective client.

Special Concern Clients and Lenders	A provision will have to be made to provide inventory services and appraisals of chattel properties held under present mortgages. This will include livestock as well as machinery and livestock feed. The BIA and creditors will also need to develop an agreement on land appraisals for Indian trust lands currently held under mortgage by the respective lenders.

ɪrated Native groups, regional corporations, and village corporations under e provisions of the Alaska Native Claims Settlement Act [43 U.S.C.A. 1601 et seq.].

(e) "Economic enterprise" means any Indian-owned (as defined by the cretary of the Interior) commercial, industrial, or business activity estab-hed or organized for the purpose of profit: *Provided*, That such Indian vnership shall constitute not less than 51 per centum of the enterprise.

(f) "Organization", unless otherwise specified, shall be the governing ›dy of any Indian tribe, as defined in subsection (c) of this section, or tity established or recognized by such governing body for the purpose of is chapter.

(g) "Other organizations" means any non-Indian individual, firm, corpo-tion, partnership, or association.

uh.L. 93-262, § 3, Apr. 12, 1974, 88 Stat. 77.)

Historical Note

References in Text. The Alaska Native aims Settlement Act, referred to in subsecs. ı to (d), is Pub.L. 92-203, Dec. 18, 1971, 85 ıt. 688, as amended, which is classified gen-ılly to chapter 33 (section 1601 et seq.) of ıle 43, Public Lands. for complete classifi-tion of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 93-262, see 1974 U.S. Code Cong. and Adm.News, p. 2873.

Cross References

nount of deposit insurance available under Federal Deposit Insurance Act for account of depositor of Indian tribe as defined in this section, see section 1821 of Title 12, Banks and Banking.

nount of insurance available under Federal Credit Union Act for account of depositor or member of Indian tribe defined in this section, see section 1787 of Title 12.

ınacquisition by federal agencies of excess personal property furnished to Indian tribes as defined in this section, see section 483 of Title 40, Public Buildings, Property, and Works.

te defined to include Tribe as defined in subsec. (c) of this section for purposes of joint funding simplification, see sections 7102 of Title 31, Money and Finance and 4261 of Title 42, The Public Health and Welfare.

contracts and subgrants awarded preferentially to Indian organizations and economic enter-prises as defined in this section, see section 450e of this title.

Library References

ıians 🔑1	C.J.S. Indians §§ 1, 2

1453. Assistance or activities of other Federal agencies unaffected

No provision of this chapter or any other Act shall be construed to termi-te or otherwise curtail the assistance or activities of the Small Business dministration or any other Federal agency with respect to any Indian be, organization, or individual because of their eligibility for assistance ıder this chapter.

ub.L. 93-262, § 4, Apr. 12, 1974, 88 Stat. 77.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 93-262, see 1974 U.S. Code Cong. and Adm.News, p. 2873.

SUBCHAPTER I—INDIAN REVOLVING LOAN FUND

§ 1461. Administration as single Indian Revolving Loan Fund sums from diverse sources; availability of fund for loans to Indians and for administrative expenses

In order to provide credit that is not available from private money markets, all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1967), and the Act of April 19, 1950 (64 Stat. 44), as amended and supplemented, including sums received in settlement of debts of livestock pursuant to sections 442 and 443 of this title, and sums collected in repayment of loans heretofore or hereafter made, and as interest or other charges on loans, shall hereafter be administered as a single Indian Revolving Loan Fund. The fund shall be available for loans to Indians having a form of organization that is satisfactory to the Secretary and for loans to individual Indians who are not members of or eligible for membership in an organization which is making loans to its members: *Provided*, That, where the Secretary determines a rejection of a loan application from a member of an organization making loans to its membership from moneys borrowed from the fund is unwarranted, he may, in his discretion, make a direct loan to such individual from the fund. The fund shall also be available for administrative expenses incurred in connection therewith.

(Pub.L. 93-262, Title I, § 101, Apr. 12, 1974, 88 Stat. 78.)

Historical Note

References in Text. Act of June 18, 1934 (48 Stat. 986), referred to in text, is classified to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title. Provisions of the Act establishing the revolving fund are set out in section 470 of this title.

Act of June 26, 1936 (49 Stat. 1967), referred to in text, is classified to subchapter VIII (section 501 et seq.) of chapter 14 of this title. Provisions of the Act relating to the revolving fund appear in section 506 of this title.

Act of Apr. 19, 1950 (64 Stat. 44), referred to in text, is classified to subchapter XXI (section 631 et seq.) of chapter 14 of this title. Provisions of the Act relating to the revolving fund appear in section 634 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-262, see 1974 U.S. Code Cong. and Adm.News, p. 2873.

Library References

Indians 🔑7.	C.J.S. Indians § 22.

Resolution #87-____

RESOLUTION OF THE GOVERNING BODY OF THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

WHEREAS, This Nation having accepted the Indian Reorganization Act of June 18, 1934, and the authority under said Act; and

WHEREAS, The Constitution of the Three Affiliated Tribes generally authorizes and empowers the Tribal Business Council to engage in activities on behalf of and in the interest of the welfare and benefit of the Tribes and of the enrolled members thereof; and

WHEREAS, Article VI, Section 5(c) of the Constitution of the Three Affiliated Tribes specifically authorizes and empowers the Tribal Business Council to represent the farmers of Fort Berthold Reservation before the legislative Body; and

WHEREAS, The biggest and best use of our natural resources is through the conversion of grass and marginal farm lands to an economic benefit through agricultural operations such as livestock growing and small grain farming; and

WHEREAS, The loss of our reservation bottomlands to facilitate the building of Garrison Dam, the current adverse agricultural economy, together with periodic drouth years over the past three and one half decades have caused our Indian enrollees engaged in such agricultural operations to experience devastating losses; and

WHEREAS, Lack of adequate credit on a timely basis, together with basically no loan administration services or required technical assistance to borrowers from government or private lending agencies who did make loans to Indian Agriculturalists, placed our enrollees engaged in converting our reservation's agricultural resources to an economic benefit in extreme hardship; and

Resolution #______-87

WHEREAS, *Based upon conclusions drawn from a study conducted by the Bureau of Indian Affairs through the Aberdeen Area Credit Task Force a need for 100 million dollars was documented to provide credit needs for Indian reservation operators in the high plains Indian reservations in order to provide for a sensible solution to the current problem of saving our trust lands and operations of those Indian enrollees who show worthiness in their operations;*

NOW THEREFORE BE IT RESOLVED, *That the Tribal Business Council requests the Honorable legislators to include an Indian Section H.R. 2340 and the like bill on the Senate side to include the following:*

1. That $100, million dollars be made available through the Bureau of Indian Affairs Indian Financing Act for the Direct Loan Program specifically to allow Indian agricultural operators and their respective tribes to utilize the debt settlement buy-out programs offered in the above Bill's now being legislated through Congress or existing FmHA Regulations.

2. That Congress mandate that the Bureau of Indian Affairs add to the language in 25 C.F.R. § 152.24 the following:

> *"When debt settlement of mortgaged Trust Lands with FmHA or other lending institution to determine the value of Trust Lands the capitalization appraisal method shall be used at the election of the borrower."*

3. That Farmers Home Administration be authorized to make appropriate changes to facilitate utilization of the capitalization rate in effecting debt settlement with tribal enrollees and tribes.

BE IT FURTHER RESOLVED, *THAT, the funds appropriated be administered at the area office level with 5% used for techinical assistance and 20% for the grant provisions of the Indian Financing Act.*

CERTIFICATION

I, the undersigned, as Secretary of the Tribal Business Council of the Three Affiliated Tribes of the Fort Berthold Reservation, hereby certify that the Tribal Business Council is composed of 7 members of whom 5 constitute a quorum, _____ were present at a _________________ Meeting thereof duly called, noticed, convened, and held on the _____ day of _________________, 1987; that the foregoing Resolution was duly adopted at such Meeting by the affirmative vote of _____ members, ____ members opposed, _____ members abstained, _____ members not voting, and that said Resolution has not been rescinded or amended in any way.

Dated the _____ day of _____________, 1987.

____
Secretary, Tribal Business Council

ATTEST:

____
Chairman, Tribal Business Council

TESTIMONY OF KENNETH J. FREDERICKS MEMBER OF THE THREE AFFILIATED TRIBES ON FT. BERTHOLD INDIAN RESERVATION.

Mr. Chairman, Commission Members, Good Morning, I am indeed honored to be able to give testimony to The Joint Tribal Advisory Commission. It is my understanding that this Commission was created by Secretary of Interior Donald Hodel for the purpose of conducting hearings and taking evidence on the impact of the implementation of the Pick Sloan Dam on the Fort Berthold Indians and their land resources, I shall direct my testimony to these impacts. I might further add that this forum has long been needed to document for the Federal Establishment the adverse impacts of their Pick Sloan Plan or Program to identify the need to assist the Three Affiliated Tribes and its members who are still suffering at present from the adverse socio-economic impacts of the dam.

I was fifteen years old living on the Little Missouri River bottom lands ranch that my father John Fredericks had built, when I first became aware of the pending dam and flooding of our reservation homeland. At that time it seemed totally impossible that a dam so far away could flood all the beautiful bottoms the Little Missouri River created in its meandering course through the badlands. These bottomlands were flat and composed of a rich sandy loam where fruit trees and meadow land grasses grew in abundance. When we planted corn in fields for winter livestock feed the corn without additional cultivation grew taller than a man on horseback. Other crops grew likewise in abundance with minimal effort except in very dry spells. During the dry spells we put barrels in our horse drawn wagon and drove into the river and filled the barrels with water. We then drove to the large garden and using buckets, watered each plant in the garden. Needless to say this was a lot of effort to raise garden produce, however when you consider that there were 9 children to support the task needs, each carrying a bucket of varying sizes, it wasn't long before the watering was complete. This was done about once a week. When one realizes that we lived about 20 miles from the nearest store and had no electricity or cooling for refridgeration to keep food, one can appreciate what garden produce meant to our livelihood. We also raised cattle, horses and pigs on our place for barter or the cash market. Many of the outside settlers or "Rooshins" as we called them came down to our place to trade for breeding bulls or work horses. We also kept chickens and geese for our food needs. When one looks back a realization that money itself played a minor role in our lifestyle except for items of hardware and clothing we could not produce. We depended upon the land and land resources for the major portion of our needs for living. Hard physical work during these times was commonplace and accepted by all. In fact the measure of a person's worth was gaged by their ability to produce in the physical labor environment. This consisted largely of cutting posts and rails, pitching hay, digging coal, digging springs and wells and other ranch related tasks including riding skills which was a basic skill everyone had mastered shortly after learning to walk.

Our recreation consisted primarily of swimming in the river, fishing in the deep "fishing holes" and freely visiting with our cousins and other relatives on both sides of the Little Missouri and Big Missouri Rivers. In season we had cattle round-ups and horse round-ups where everyone who had livestock would pitch in and gather the stock out of the river bottoms or in case of horses from the highlands and put permanent identification in place by branding the cows or horses with their respective brands. During the winter all school age children attended the district day schools or in some cases the agency school. The frozen river channel provided a smooth highway for parents to bring the children home for weekends or school vacations when the weather permitted. This was the life I remember when I was growing upon the river bottoms on the Fort Berthold Reservation which I regarded as my homeland.

To bring this testimony back in focus I now relate to the sequence of events and problem areas that was experienced in the taking of this homeland under the Pick Sloan Program.

I was in the U.S. Air Force serving in Germany when I received a large envelope with War Department in the upper left hand corner. My room mate gasped when he saw the impressive looking mail I had received. I opened the envelope and in it was a form letter and several forms filled out with the description of my land and a price of $2,600 they had appraised the 66-2/3 acres to be worth including all minerals and coal. After a review of the documents I tore them in half and pitched them into the waste basket. My room mate was awed by my action but I reassured him by saying "they are trying to steal from me what we are supposed to be protecting, my homeland." He agreed with me and I also asked why would they need the minerals and coal if they are going to flood this land? About 2 months later I received another large envelope this time accompanied by a letter from my mother who said that the Chief Clerk at the Agency said I should accept the offer the Corps of Engineers was making me for the land. My mother further stated that the proceeds of their flood payment was being held up and they needed funds to start relocating the ranch to higher ground, including the purchase of an 80 acre tract which was being appraised by the BIA so they could purchase some higher ground to relocate upon. I signed the papers and sent them back. Later in the year I returned to the United States and was selected for fighter pilot training by the Air Force. However, my father requested that I come home and help him rebuild the ranching operation on higher ground. I did not refuse this request so I cut short my Air Force career and went back to my homeland to assist in our relocation.

One of the first problems we encountered was the fact that the Corps of Engineers had grossly undervalued the property they had taken from individuals for flooding and the taking area above the dam level. The grazing land we operated on in the riverbottom was valued by them at $3.33 per acre. The BIA appraisers however valued the highland acres at 30 to 90 dollars per acre. Another problem was the inordinate amount of time these land transactions took to consumate. In many instances the seller got discouraged and withdrew from the proposed transaction. Many of the relocatees thought that this was a deliberate attempt to prevent them from reacquiring a land base. Also the BIA appraisers were gaining total control over the land transactions through their published regulations that they had to attest as to the value of all trust land exchanged or sold in BIA realty transactions. I am appending a Missouri River Basin Investigations report to substantiate and elaborate on this problem. (Ref. MRBI report attached.)

After pulling together adequate lands to start operating again through acquisition of 160 acres and leases we started to really experience what our riverbottoms meant to us in cost of wintering livestock and our general lifestyle. First off, where we got along real well with about one half ton of riverbottom hay, we found that we needed two ton of upland hay as well as man made shelter to winter each cow. The horses which fended for themselves in the bottomlands now required feed and shelter also. our fuel supply of coal and wood no longer existed so we were compelled to resort to fuel oil and propane for heating and cooking. This meant new dollar costs to come from ranch production.

In order to meet the rising need for additional cash money and the limited grassland available for additional livestock we started tilling the soil for increased production of livestock feed and cash grain crops. Even at this time when costs of farm production were more in balance with expected yield and income we realized that farming on the south side of the reservoir was not a paying proposition. So then came mortgages and FMHA loans to increase the dollar return through larger scale operations. And as we all know the agricultural/economy took a downturn and we are now looking toward some economic relief to protect our current homelands from foreclosure and subsequent alienation from our reservation land base.

We have looked at irrigation of our better farmlands however, in pursuing this project the technical feasibilities show that our remaining farmland is not suitable for the large scale development needed to enhance the reservation economy. (See report Inventory of Water Resources Phase II Sept 1977). In this report which is intended to maximize the identification of practically irrigable land the true economics of scale could not be realized because much of the acreage is interspersed with non-arable acreage making it economically unfeasible during this period of surplus agricultural production. A more practical approach would be to identify and make available to the Tribe the electric power required to lift water 300 feet to irrigate the practically irrigable acres identified in the report. This would be given to the Tribe without cost and the Tribe could work with individual developers to provide free or low cost power to irrigate small areas which would provide a stable source of livestock feed or winter forage. The power not used for irrigation would be pro-rated to the Indian homes on the reservation thereby giving them some relief from the high cost electric power they have to depend on for living needs formerly available to them from the reservation bottomlands.

Another approach to mitigate the economic impacts of siteing of the reservoir on the reservation bottomlands would be to return to the Tribe other government owned lands adjacent to or near the reservation so that the residents could increase their livestock herds and economic base of the Tribe. However, now matter what is decided to assist the Indians who are still suffering socio-economic deprivation from the impacts of the Pick Sloan Program there will still remain an obligation of the United States to do a complete analysis of what is really required to compensate the Tribe and tribal members.

One issue that could be resolved would be a return of all non-flooded lands to the original owners where the acreage consists of more than twenty acres. In cases where the acreage is less the Tribe would receive title in trust. Likewise the minerals, oil and gas, and coal would be given back to the original allottees. This could be done in a manner similiar to the return by the U.S. Air Force of the gunnery range on the River Ridge reservation.

Further, I would like to remind the commission that the Three Affiliated Tribes and their membership cooperated with the United States by making available the heart of their homeland for "flood control". As a consequence the Tribe has suffered many adverse socio-economic impacts and the membership has only bitterness and memories of a better life style as a result. Consideration from the moral if not legal perspective needs to be given by our government.

Again, Mr. Chairman and Commission members I thank you for the time you have given me and I wish God's blessing on your endeavors. I sincerely hope that the work you are doing does not end up in a bureaucratic scrappile but perseveres to lend credibility to our Country's position on human rights.

Thank you.

EXHIBIT 5

for Sept 1, 1987

8/20/87

DATE: August 11, 1987

TO: Mr. Alonzo Spang Sr. and Senator Conrad Hearing
Committee
Superintendent Ft. Berthold Agency
New Town, No. Dak. 58763

RE: Personal case history for Senator Conrads Hearing on distressed economics of farming and ranching conditions at Ft. Berthold pursuant to the Bill in Congress H.R. 2340.

Dear Mr. Spang and the Hearing Committee:

At this point in time I would like to make available to you and the Committee an overview of some of my personal situations reflected and caused by the economic crisis we have been in that caused the crushing of our production process:

1). I started ranching in 1959 and paid over $400,000.00 in BIA leases to the present. My sons are 26, 27 and 31 and played an integral part; Terry took out a unit and FmHa loan in 1979, but conditions reflected a negative future for farming and ranching at that time and they left to seek employment and alternative careers.
I myself decided to stay and weather with the storm. Terrance has this year decided to return to seek out and rebuild back into ranching as their first priority has always been ranching.

2). We have always had a negative feed supply since we were moved to the bench lands, and I strived to correct this through a development process on lands purchased at high rates through FmHA to over come this. This is the reason for my scattered land base. My feed supply results are astonishingly successful at this point. The debt load is also astonishingly high, and under the present circumstances, impossible to repay.

3). I am very pleased to see the communities all working together in a struggle to overcome a bad situation in favor of a better future for all the farmers and ranchers of America. If we get to debt settle or a buy out with our lands within this bill I would like to see the Indian land debt settled on what the land can produce or (capital value) settlement rather than fair market value which is around 40% higher than the Indian lands production average. However, either settlment would be better than none.

RECEIVED
BRANCH OF ADMINISTRATION
AUG 20 1987
FORT BERTHOLD AGENCY
NEWTOWN, N. DAKOTA 58763

RECEIVED
AUG 20 87
BRANCH OF CREDIT

EXHIBIT
5

Pursuant to all our meetings and appeals plus the meetings with you and Paige Baker on 8-10-87 and within the ramifications of Senator Conrad and Representative Dorgans Bill HR 4320 it is my understanding, that this is all designed to put us ranchers and farmers back into production on a positive cash flow basis, rather it comes from an Tribal Administrative buy out or a settlement within FmHA and it is not a design to just supplement a Tribal land acquisition program, because if this is the case then you should let me know as soon as possible. I want you to know that my greatest concern is to retain my land.

Please use this statement for the panel's review on personal case history pursuant to the material received dated 8-3-87 (several Tribal Farmers and Rancher's Panel #2 on the hearing scheduled for 9-1-87.)

If you have any questions please contact me at my address P.O. Box 325, Halliday, No. Dak. 58636.

Sincerely Yours,

Pete Fredericks

Pete Fredericks
Tribal landowner and operator
cc: Representative Dorgan
Senator Conrad
FmHA
Three Affiliated Tribes

Addendum to testimony dated August 11, 1987

Senator Conrad Hearing Committee Sept. 1, 1987.

September 8, 1987

Senator Kent Conrad
Room 228
200 East Rosser Avenue
Bismarck, North Dakota 58501

The Honorable Senator Conrad:

Pursuant to your request, when time disallowed you to call on me, when I had my hand up at the Sept. 1, 1987 hearing, "I could write in my testimony" so I will add this testimony with the one of August 11, 1987 addressed to Supt. Spang and Senator Conrad Hearing committee.

Senator, I would like to call to your attention to the fact that the eligibility requirement of "The Indian borrower's present debt to the federal government may not exceed $400,000, accumulated principal and interest", within our Chairman's proposal of 25 USC 1451 restructuring; would eliminate all of us ranchers, that were in the business through the 1960's on, and therefore I would like to make this statement, in reference to it:

Through the years I have developed a stock yards and scale located in the Mandaree area 40 miles from New Town and directly across Lake Sakakawea from my cow ranch at Twin Buttes as my Dad's ranch was located there on the river. I own two key tracts of land on the Mandaree side of the lake which are both fenced, and it seem's they are very attractive to the Indian rancher's of the late 1970's as these guys did not have the expensive transitional period of the 1960's. In this period a group of Republican non-Indian Ranchers controlled 95% of the grazing land on Ft. Berthold. The low price of the grazing fees reflected that they controlled these also. After the incentive was in place, 95% Indian use, the lease fee rose fifteen fold ($6.00 to $78.00 AUY). I would like to add that without the 1960 expenses these later Indian Ranchers can boast of profits. At the present time they are getting fat off our fences, springs, and general improvements of the 1960's. As a matter of fact two of us Indian Ranchers who took over the "BIG LEASE" from the non-indian ranchers were offered a substantial bribe if we would just let the Big Lessors continue the status quo.

I would greatly appreciate your deleting the $400,000, limitation of the Chairman's proposal. As the proposal stands, only the young Farmers and Ranchers would benefit from it.

Thanking you for your consideration
Sincerely,

Pete Fredericks
Tribal Land owner and operator

: Representative Dorgan
FmHA
Three Affiliated Tribes

EXHIBIT 6

Questions submitted by Senator Kent Conrad to FmHA:

Fm HA

(1) Please state the number of the FmHA administered farm loans, and the dollar amount, made by Indian farmers on the Fort Berthold Reservation as of the date of this letter.

(2) Please state the aggregate number of acres of trust lands pledged by Indian farmers to secure these loans on Fort Berthold.

(3) Please state the number of loans, and their amounts, to Indian farmers that are presently delinquent on Fort Berthold.

(4) Please state, with reference to the above referenced delinquent loans, the present status of FmHA action as to each loan.

(5) Please state the expectd number of defaults on all outstanding Indian farmer loans on Fort Berthold.

(6) Please state the expected number of trust acres your agency is likely to acquire by way of foreclosure, or voluntary conveyance, on the Fort Berthold Reservation.

(7) Please state the loan servicing options made available to distressed Indian farmers on the Fort Berthold Reservation.

(8) Please state whether any of the delinquent loans to Indians have been refinanced, or otherwise restructured, as a result of the exercise of any loan servicing options on Fort Berthold.

(9) Please state how many Indian farmers, if any, have voluntarily liquidated their debts with FmHA on Fort Berthold.

(10) Please state how many Indian loans have been foreclosed on the Fort Berthold Reservation.

(11) Please state the loan qualification procedures used to ensure the viability of loans made to Indian farmers on Fort Berthold.

(12) Please state the nature, and scope, of the cooperative relationship between FmHA and the Bureau of Indian Affairs to ensure that only viable loans are made to qualified Indian borrowers.

(13) Please state whether FmHA has issued any joint statements with BIA regarding the procedures to be followed when trust lands are pledged as security for a loan.

(14) If so, please attach a copy of any such document to your response.

(15) Please state whether the BIA on Fort Berthold has ever rejected any proposed FmHA loan, or required a modification, to a Indian barrower that required a pledge of trust land as security for the loan.

(16) Please state whether Farmers Home Administration provides any technical assistance to tribal farmers to assist them in improving the management of their farm operations.

(17) Please state any recommendations your agency may have to resolve the debt credit crisis on Fort Berthold.

United States
Department of
Agriculture

Farmers
Home
Administration

P.O. Box 1737
Bismarck, ND 58502

August 28, 1987

Senator Conrad
United States Senate
Washington, D.C. 20510

Dear Senator Conrad:

This is in response to the Seventeen (17) questions that you forwarded to my office concerning FmHA loans to Indian farmers and ranchers on the Fort Berthold Reservation.

1. FmHA has Eighty Five (85) Indian farm and ranch borrowers on the Fort Berthold Reservation with a total outstanding debt of approximately $22,000,000.00
2. The aggregate number of trust land acres pledged by Indian operators to secure FmHA loans on the Fort Berthold Reservation is approximately $43,000 - 45,000 acres.
3. FmHA has Sixty Seven (67) Indian farm and ranch loan borrowers that are delinquent with loan balance of approximately $19,000,000.00 of which $18,400,000.00 is delinquent.
4. The present status of FmHA action as to the Indian delinquent is as follows:
    (a) Forty (40) borrowers received the Notice of Intent forms.
        1. Twenty one (21) of these have been accelerated.
        2. Nineteen (19) of these are waiting hearings, mandatory conferences, refinance action or have not responded to letters requesting information.

    (b) Twenty Six (26) Indian borrowers have partially voluntarily liquidated but still owe a debt.

    (c) Eleven (11) are delinquent in 1987 and the majority will be current by the years end.
5. FmHA expects that approximately Forty (40) Indian farmer/ranchers will default under present conditions.
6. FmHA expects approximately Thirty Two Thousand (32,000) Indian trust land acres will be acquired through foreclosure or voluntary conveyance on Fort Berthold or possibly acquired by

FmHA Farmers Home Administration is an Equal Opportunity Lender
Complaints of discrimination should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

the tribe by the use of the Indian Acquisition Loan.

7. The loan servicing options made available to distressed Indian farmer/ranchers on Fort Berthold are the following:

   - 5 year deferral of the scheduled payments.

   - Limited resource rates for farm ownership and operating loan borrowers.

   - Rescheduling, consolidating, or reamortization of delinquent loans.

   - Subordination of lien to other creditors.

   - Restructuring the operation and debt by selling off some of the assets.

   - Refinancing part of the debt and "buying out" part of own assets at fair market value, convey back remaining security for full release of FmHA debt.

8. Yes, we have had Two (2) that refinanced their chattel assets and have about Six (6) more in different stages of accomplishing this.

9. There have been Two (2) FmHA Indian borrowers who voluntarily liquidated their debts and have been released of total debt.

10. There have been Three (3) FmHA Indian borrowers foreclosed on Fort Berthold.

11. The following loan qualification procedures are used for all farm applicants on Fort Berthold to ensure the viability of a loan:

    - A "complete" application is required and submitted to the FmHA Area Committee for determination of eligibility. The Committee considers an individuals farm background, training or experience, credit history, managerial ability and industry along with citizenship, legal age, need for farm income and other credit availability in determining eligibility. If eligible, further processing is done to determine if loan purposes are met, loan and entire debt has payability and a proper positions can be obtained. If an Indian real estate loan, the Bureau of Indian Affairs (BIA) Area Director must approve the mortgage document encumbering the Indian trust land. It an Indian non real estate loan is made the BIA does not approve any documents.

12. The nature, and scope of the cooperative relationship between FmHA and BIA to ensure that only viable loans are made to qualified Indian borrowers is as follows:
    - As mentioned in Item 11 the BIA is involved only when real estate security requires BIA approval of the mortgage.

- BIA is provided copies of the executed mortgage, promissory note and completed farm and home plan along with a cover letter regarding the proposed loan. They in turn review the material, may discuss it with FmHA, do whatever else they are required to do within their agency and approve or disapprove the request.

13. FmHA does not have any joint statements with BIA regarding the procedures to be followed when trust lands are pledged as security for a loan.

14. See Item 13 above.

15. Yes, the BIA on Fort Berthold has denied the approval of a real estate mortgage for an FmHA loan on Indian trust land. Frequently the proposed loan is discussed between BIA and FmHA and in some instances modifications are made.

16. FmHA provides supervision to Indian farmers/ranchers in both financial and production management areas. They are assisted in development and utilization of farm records, financial statements, budgets, cash flow statements, etc for improvement of their financial management. Production and marketing management such as cow/bull selections, improving calf crop percentages, marketing weights and techniques in the sale of the product are covered as needed. FmHA relies heavily on County Agents, ASCS and SCS Offices, Agricultural Schools and Experiment Stations to assist FmHA borrowers in more specific type questions or problems they may have. FmHA refers borrowers to these sources providing a name and telephone number if available. Ag Credit Counselors are also available & being used.

17. I would say that we should continue to use all the servicing options available to help distressed family farmers, whether they are on the reservation or off, to stay farming if it is deemed they have a reasonable chance for success by using these servicing options. We should continue to be careful in approving loans in a way that there is a reasonable chance for people to become successful when a loan is initially considered. We stand ready to follow and adjust our servicing options to any new laws that are being passed by congress. We should be in a positions to implement the laws as passed to the best of our ability. I hope this answers the questions that you have furnished.

Sincerely,

Ralph H Leet.

RALPH H. LEET
State Director

UNITED STATES DEPARTMENT OF AGRICULTURE
FARMERS HOME ADMINISTRATION
New Town,ND 58763

September 4, 1987

SUBJECT: Additional Information/Senator Conrad

SEP 8 [illegible]

TO: Odell O. Ottmar
Chief, Reservation Programs
Bismarck, ND 58502

The following additional information is provided as requested by Senator Conrad. A breakdown of the Indian Farmer Program loans on Fort Berthold, by numbers and delinquencies is as follows:

- The Indian Farmer Program borrowers total eighty five (85), sixty seven (67) of these are delinquent.

- Operating Loan (OL) program:
  Seventy (70) Indian operators have OL loans
  Fifty seven (57) are delinquent (81%)
  One hundred forty nine (149) total OL loans to Indian operators
  One hundred one (101) are delinquent (67%)

- Farm Ownership (FO) loan program:
  Forty (40) Indian operators have FO loans
  Twenty six (26) are delinquent (65%)
  Seventy eight (78) total FO loans to Indian operators
  Forty eight (48) are delinquent (61%)

- Emergency (EM) loan program:
  Fifty three (53) Indian operators have EM loans
  Thirty eight (38) are delinquent (71%)
  Two hundred twenty five (225) total EM loans to Indian operators
  One hundred fifty one (151) are delinquent (67%)

- Economic Emergency (EE) loan program:
  Fifteen (15) Indian operators have EE loans
  Twelve (12) are delinquent (80%)
  Twenty three (23) total EE loans to Indian operators
  Sixteen (16) are delinquent (69%)

Hope this answers the senators questions.

Lorace Hakanson
LORACE HAKANSON
Reservation Office Director

Farmers Home Administration is an Equal Opportunity Lender.
Complaints of discrimination based on race, sex, religion, age, national origin, marital status or handicap should be sent to:
Secretary of Agriculture, Washington, D.C. 20250

EXHIBIT 7

KENT CONRAD
NORTH DAKOTA
202-224-2043

COMMITTEES
AGRICULTURE, NUTRITION, AND FORESTRY
ENERGY AND NATURAL RESOURCES
BUDGET

United States Senate
WASHINGTON, DC 20510

August 21, 1987

Mr. Al Spang
Superintendent
Bureau of Indian Affairs
New Town, North Dakota 58763

Dear Mr. Spang:

I would very much appreciate your presence and that of Mr. Dave Pennington at a Fact Finding Forum I have scheduled for 4 p.m., September 1, at the New Town, North Dakota, Civic Center. I do not expect you to give formal testimony, but would appreciate your presence and willingness to respond to questions.

As a Senator from North Dakota, I have deep concern about the potential loss through foreclosure, or by voluntary liquidation, of reservation lands used by Indians as collateral for obtaining Farmers Home Administration (FmHA) farm loan. This danger of the loss of the trust agricultural land base is particularly severe on the Fort Berthold Reservation in Northwestern North Dakota.

I would also appreciate your detailed response to the following questions for review at my fact finding forum. It would be helpful to receive your response to the questions at my Bismarck office prior to the forum. That address is: Room 228, Federal Building; 220 East Rosser Avenue; Bismarck, North Dakota 58501.

1. Please state the number of Bureau of Indian Affairs (BIA) administered agricultural loans (direct or guarantee status), and the dollar amounts, made by Indian farmers on the Fort Berthold Reservation as of the date of this letter.

2. Please state the aggregate numbers of acres of trust lands pledged by Indian farmers to secure these loans on Fort Berthold.

3. Please state the number of loans, and their amounts, to Indian farmers that are presently delinquent on Fort Berthold.

4. Please state, with reference to the above-referenced delinquent loans, the present status of BIA action as to each loan.

5. Please state the expected number of defaults on all outstanding Bureau of Indian Affairs Indian farmer loans on Fort Berthold.

EXHIBIT
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6. Please state the expected number of trust acres your agency is likely to acquire by way of foreclosure, or voluntary conveyance, on the Fort Berthold Reservation.

7. Please state the loan servicing options made available by your agency to the distressed Indian farmers on the Fort Berthold Reservation.

8. Please state whether any delinquent loans to Indians have been refinanced, or otherwise restructured, as the result of the exercise of any loan servicing option on Fort Berthold.

9. Please state how many Indian farmers, if any, have voluntarily liquidated their debt with Bureau of Indian Affairs on Fort Berthold.

10. Please state the loan qualification procedures used by Bureau of Indian Affairs to ensure the viability of loans made to Indian farmers on Fort Berthold.

11. Please state the statutory and/or regulatory basis the Bureau of Indian Affairs has for approving mortgages of trust lands as security for Farmers Home Administration farm loans to Indian borrowers.

12. Please state the loan analysis procedures the Bureau of Indian Affairs follows on Fort Berthold to ensure the viability of loans made by Farmers Home Administration to Indian farmers on Fort Berthold in cases where trust lands are pledged as security for those loans.

13. Please state the number of Farmers Home Administration administered farm loans, and the dollar amounts, to Indian borrowers that required, Bureau of Indian Affairs' approval by virtue of the fact that trust lands were pledged as security for those loans.

14. Please state whether Bureau of Indian Affairs has any cooperative agreement with Farmers Home Administration to ensure that only viable loans are made to qualified Indian borrowers.

15. Please state the specific action the Bureau of Indian Affairs has taken to prevent the loss of trust lands through foreclosure, or voluntary liquidation, on the Fort Berthold Reservation.

Mr. Al Spang
August 21, 1987
Page 3

16. Please state whether the Bureau of Indian Affairs on Fort Berthold has approved mortgages of trust land to Farmers Home Administration on behalf of any Indian borrower, when their debt repayment capacity was questionable or otherwise impaired?

Enclosed is a tentative agenda for the forum. Thanks for your kind cooperation.

Sincerely,

Kent Conrad

Kent Conrad
United States Senator

KC/blc

Editor's note: Exhibit 9 is the response to Exhibit 7.

EXHIBIT 8

STATEMENT OF
RALPH H. LEET, STATE DIRECTOR
FARMERS HOME ADMINISTRATION
UNITED STATES DEPARTMENT OF AGRICULTURE
AT A PUBLIC FORUM SPONSORED BY
SENATOR KENT CONRAD
NEW TOWN, ND
September 1, 1987

Good afternoon, Senator. I appreciate the invitation to be with you today to discuss activities of Farmers Home Administration in North Dakota, and the particular problems experienced by Indian farmers and ranchers here at the Fort Berthold Reservation.

As of last March 31, FmHA had more than 22,000 loans totalling $1.3 billion outstanding in our state. By far, the largest majority were farm loans; more than 15,000 were held by 8,900 individual borrowers for a total of more than $1 billion. Rural housing totaled $186 million, and community and business loans totaled $80 million.

Guaranteed loans are up considerably in the state this year. During the first 10 months of the fiscal year, we made 556 guaranteed operating loans for $44 million compared with 373 guaranteed operating loans for $31 million for all of fiscal 1986.

Our portfolio also includes three Indian tribe acquisition loans totalling almost $8.5 million. Another land acquisition loan for $2 million is near completion. We expect a closing early this fall. With that loan, the Three Affiliated Tribes here at Fort Berthold will be able to purchase land in the name of the tribes that otherwise might escape their control.

The land acquisition program is a good one. But it does not get to the special problems that exist for the estimated 85 Indian farm borrowers that we serve. We have all recognized the special needs of the Native American farmers and ranchers in North Dakota. FmHA appointed a new

EXHIBIT
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Indian Coordinator position as far back as 1974. That person, Odell Ottmar, operates very much like an FmHA District Director with direct responsibility through reservations of the state plus two counties. Mr. Ottmar has also served in the local FmHA office here at Fort Berthold before becoming State Coordinator.

The particular problems affecting the Indian farmers and ranchers here arise from two sources. One is that most all of them are producers of small grains and livestock; two enterprises that have been especially affected by the economic stress suffered by the agriculture sector in recent years, although cattle prices have recovered somewhat in recent months.

The second circumstance we find here is an extremely limited source of non-Government credit available to those who farm on the reservation. Commercial lenders are reluctant to make loans to those farmers even if they have adequate collateral, as lenders are very wary of potential jurisdictional problems in servicing or in liquidation, if this should become necessary.

We are here, of course, to work with all our borrowers in as many ways as we can to help improve life throughout rural America.

We should bring out that Farmers Home Administration in North Dakota has direct operating loan funds to eligible Indian operators to purchase livestock and equipment, and operating expenses, as well as operators off the reservation.

FmHA tries to stretch the direct funds by subordinating the loans to other creditors whenever possible. This allows other creditors to supply direct operating funds and we use our direct funds for capital purchases.

The New Town FmHA County Office is presently making subordination loans to Indian operators for Fiscal 1987 to continue to work with the borrowers on this reservation, to reach our objective to have successful farmers and ranchers that are able to generate cash flow, and pay back the money they borrowed.

Thank you.

EXHIBIT 9

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO:
Credit

AUG 31 1987

Honorable Kent Conrad
United States Senate
Room 228 Federal Building
220 East Rosser Avenue
Bismarck, North Dakota 58501

Dear Senator Conrad:

As the principal federal representative for the Bureau of Indian Affairs in the Aberdeen Area, I wish to express our appreciation for your concern regarding the potential loss of trust lands through mortgage foreclosures. We welcome the opportunity to provide information on the Bureau's financial assistance programs available to tribal members. We are providing the following narrative in response to your inquiry addressed to Dr. Al Spang, Superintendent, Fort Berthold Agency and Mr. Dave Pennington, Billings Area Office.

The BIA provided loan funds to seven members of the Fort Berthold Indian Reservation for agricultural related purposes. A breakdown of those loans is as follows:

Loan	Amount	Operation	Status
CF-1	$ 100,000	feed lot/cattle	Delinquent
CF-2	23,350	cow/calf	Current
CF-4	99,300	cow/calf	Vol/Liq
CF-5	100,000	cow/calf	Delinquent
CF-6	24,709	Yearlings	Delinquent
CF-7	24,709	Yearlings	Delinquent
CF-13	100,000	cow/calf	Delinquent

Attachment A lists a complete breakdown of all types of BIA financial assistance provided on the Fort Berthold Reservation.

The seven loans listed above have all been made since January 31, 1985. Prior to 1985, the Tribe operated a relending program whereby the Tribe borrowed U. S. Revolving loan funds and in turn provided loans to individual tribal members. The Indian Financing Act of 1974 restricted U.S. direct loans to individuals members of tribes that were operating tribal relending credit programs. In the fall of 1983, the Tribe opted to discontinue the relending program and participate in

EXHIBIT
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the United States Direct Loan Program. Our Washington Office approved the Tribe's establishment of a U. S. Direct Loan Program in May of 1984 and allocated $800,000 in fiscal year 1985 to the Fort Berthold Indian Reservation. Of the allocated funds, $477,068 was provided to Indian ranchers.

NOTE: The 1984 amendments to the Indian Financing Act removed the restriction that precluded the Bureau from making direct loans to individuals who are members of Tribes which operate a tribal relending credit program.

We provided a 90% guarantee on one $100,000 loan. The loan was to buy out a Farmers Home Administration loan and to purchase cattle. The loan is current.

The Bureau of Indian Affairs holds one trust land mortgage consisting of 100 acres as security for an agricultural related direct loan. We do not anticipate acquiring this tract of land through mortgage foreclosure. The guaranteed loan is not secured by trust land.

The Bureau's collection policy allows the delinquent borrower and lender five alternatives when a loan becomes delinquent. The alternatives are as follows:

a. Bring loan current
b. Reschedule
c. Modification
d. Voluntary liquidation
e. Foreclosure action

Bureau collection policy stipulates that no later than ninety days after the due date, the delinquent loan will be declared in default with the full amount due and payable. The Bureau has delayed default action in many cases to allow the borrowers an opportunity to avail themselves to other remedies to cure the delinquency.

The Bureau has delayed foreclosure action on the CF-1 borrower. The borrower is negotiating with the Tribe on a land purchase. The borrower chose to sell the land.

The CF-4 borrower chose to voluntary liquidate. The proceeds of the cattle sales were all applied to the outstanding debt.

The CF-5 borrower has agreed to bring the loan current. If he complies, we will continue this loan.

The CF-6 & 7 borrowers received loans for yearling operations in the spring of the year. The loans were payable the same fall. The borrowers sold the yearlings but sustained a loss. There is presently a hold on their individual Indian monies account for the remaining principal balance of approximately $2500 on both loans.

An initial notification of delinquency on CF-13 was mailed on May 28, 1987. Further action will be taken per established collection procedures.

All delinquent loan clients will be visited by the Agency Loan Specialist beginning September 3, 1987. The visits will include field inspections to assure that the Government's collateral position has not diminished and discussion with the borrower on the options available to them. If the borrower is unable to bring the loan current, rescheduling and modifying the loans will be options available to them providing the loans cash flow. If the cash flow analysis reveals that the borrower will be unable to debt service and meet normal operating expenses, we will offer voluntary liquidation as an option. Foreclosure action will be initiated as a last resort.

Presently, only one loan is being modified. The paperwork has not been completed to date. We feel certain that other delinquent loan clients will avail themselves to rescheduling and modifications.

Only one Indian rancher has voluntarily liquidated his debt with the Bureau of Indian Affairs. The loan was secured by livestock.

The Indian Financing Act stipulates that only members of federally recognized Tribes are eligible for financial assistance. The business must be established as a profit-making entity and be located on or near an Indian reservation. If the business is located off reservation, the business must show economic impact on the reservation.

Titles I and II of the Indian Financing Act provide that the Bureau must have adequate assurance of repayment capability. We attempt to establish reasonable repayment prospects by thoroughly and carefully reviewing the applicant's character, capacity and collateral associated with the applicant.

The Act of March 29, 1956, Public Law 450, is the statutory authority which allows individual Indians to mortgage their trust lands. The Act stipulates that the mortgage must be approved by the Secretary of Interior or his authorized representative. The Aberdeen Area Director has been delegated the authority to approve trust land mortgages.

The Act stipulates that the land is subject to foreclosure pursuant to the terms of the mortgages and in accordance with the laws of the state in which the land is located. The Indian land owner is regarded as vested with fee simple title for the purpose of allowing the foreclosure action to occur. However, title does not pass out of trust until the redemption period has expired and a sheriff or marshall's deed is issued.

The regulations governing the procedures for handling trust land mortgage approval are contained in 47 BIAM.

The Bureau does not review or conduct analysis on Farmers Home Administration loans. We do, however, review all trust land mortgages to assure that the security pledged is not excessive.

According to a recent FmHA report submitted to the Senate Select Committee on Indian Affairs, a total of 43,383 acres of trust land were pledged as security for loans on the Fort Berthold Reservation. A total of 58 Indian borrowers received FmHA direct loans secured by real estate. The outstanding loans to those borrowers totaled $11,729,108. There were actually 217 loans made to these 58 borrowers.

The Farmers Home Administration and the Bureau of Indian Affairs interact primarily when an Indian borrower is pledging trust land since the mortgage must be approved by the Bureau. At one time the Bureau and FmHA entered into a Memorandum of Understanding, however in 1979 FmHA issued a joint statement stating that since working relationships between FmHA and BIA were well established and understood by field personnel, special detailed instructions were no longer needed.

The Bureau requires FmHA to notify the Agency when foreclosure proceedings against Indian trust land are initiated by the FmHA. The Bureau has worked diligently to assist Indian ranchers who are faced with foreclosure. However, current Bureau eligibility requirements stipulate that potential borrowers have at least twenty percent equity in their operation. For the most part, when foreclosure actions are initiated against an FmHA loan client, they no longer have any equity in their operations.

Sincerely,

Melvin J Rousseau

Acting Area Director

Copy to your Washington Office

ATTACHMENT A - Page 1

U.S. DIRECT LOANS	GUARANTEED LOANS	IBDP GRANTS	AMOUNT	DATE OF GRANT/LOAN	STATUS OF LOAN/GRANT	ACTION TAKEN	EXPECTED DEFAULT	ACREAGE MORTGAGED
** 1	0	0	$100,000.00	1/31/85	Delinquent	Delayed Foreclosure		100 acres
** 1	0	0	23,350.00	9/3/85	Current	-	No	Chattel mortgage
*** 1	0	0	100,000.00	4/16/85	Delinquent	Working on Modification	Yes	Mortgage no signed
** 1	0	0	99,300.00	4/26/85	Foreclosure	Liquidated	Liquidated	-
** 1	0	0	100,000.00	4/8/85	Delinquent	Will bring current	No	-
** 1	0	0	24,709.00	9/6/85	Delinquent	Hold on IIM Account	No	-
** 1	0	0	24,709.00	9/6/86	Delinquent	Hold on IIM Account	No	-
*** 1	0	0	100,000.00	10/1/85	Delinquent	Bankruptcy	Bankruptcy	1/3 interest in 60 acres
*** 1	0	0	100,000.00	9/27/85	Delinquent	c., d., or e	No	80 acres
*** 1	0	0	35,000.00	9/18/85	Delinquent	c.	Yes	60 acres
*** 1	0	0	30,000.00	9/27/85	Current	Modified & Rescheduled	No	80 acres
*** 1	0	0	62,932.00	9/9/85	Delinquent	Delayed Foreclosure	Yes	-
** 1	0	0	100,000.00	6/13/86	Delinquent	a., d., or e	Yes	-

FORT BERTHOLD GRANT/LOAN PROGRAM

U.S. DIRECT LOANS	GUARANTEED LOANS	IBDP GRANTS	AMOUNT	DATE OF GRANT/LOAN	STATUS OF LOAN/GRANT	ACTION TAKEN	EXPECTED DEFAULT	ACREAGE MORTGAGED	PRINCIPAL DELINQUENT
0	0	** 1	$ 40,000.00	12/23/86	-	-	No	-	-
0	0	** 1	24,760.00	3/31/87	-	-	No	-	-
0	0	** 1	32,063.00	5/22/87	-	-	No	-	-
0	***1	0	750,000.00	1985	-	Modified	No	-	-
0	** 1	0	100,000.00	1987	-	-	No	-	-

Footnotes:

* Collection policy allows the delinquent borrower and lender five alternatives on the loan: a. Bring current, b. Reschedule, c. Modification, d. Voluntary Liquidation, e. Foreclosure Action.

** Are Agriculture/Livestock loans (7), and grants (3)

*** Are Commercial business project loans (6), and 2 loan guaranty.

Narrative:

All delinquent loan clients will be visited by the Agency Loan Specialist beginning September 3, 1987. During the visit/security check, the alternatives listed in the collection policy will be discussed with each client. With item a, (bring current) being foremost in discussion. If item a. can be achieved, then items b. (reschedule) and c. (modification) could be an option. If making the loan current is not possible, item d. (voluntary liquidation) will be offered to the client, with item e (foreclosure action) the final option.

EXHIBIT 10

Proposed legislation by the Three Affiliated Tribes

A BILL

For the protection and preservation of Indian trust agricultural lands pledged as security for farm loans administered by the Farmers Home Administration; for the purpose of fair and equitable restructuring of Indian farm loans owed to the federal government so as to promote the treaty agricultural purposes of reservations; and for the provision of direct technical and managerial assistance and training to new Indian farmers and ranchers; and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled:

FINDINGS

Section 1. *The Congress finds that:*

(1) After the last of the Indian land takings of the early twentieth century, Indian Tribes of the High Plains were left with only grasslands as a potential source of economic self-sufficiency for their membership and revenues to support tribal government;

(2) For over seventy-five years, the Tribes of this area and the members thereof have, with minimal assistance and guidance from the federal government, actualized that potential through animal husbandry and/or lease of the lands and more or less successfully secured their livelihood and maintained their governments;

(3) The severe economic dislocation in American agriculture, generally, resulting from inflation, depressed agricultural and livestock markets, and tight credit coupled with jurisdictional problems, has had a devastating effect on livestock operators in his area. Over 50% of the Indian borrowers from Farmers Home Administration are facing liquidation and foreclosure;

(4) Foreclosures on allotted lands in the High Plains is eroding the Tribal land base. In effect, a late twentieth century Indian land taking is about to occur;

(5) Recent federal budget cuts have left the Bureau of Indian Affairs unable to protect these Tribes and their member livestock operators from financial disaster;

(6) It has been the policy of the Congress since 1974 to support Indian Self-Determination and sustain tribal governments.

EXHIBIT
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DECLARATION OF PURPOSE

SECTION 2. Congress declares that:

(1) The preservation of the Indian trust agricultural land base from loss to foreclosure, or liquidation, is a trust responsibility of the federal government owed to the Indian tribes.

(2). A similar trust duty is owed by the federal government to assist the tribal farmer or rancher who through debt reduction and restructuring may remain a viable agricultural operator.

(3) Immediate steps must be taken to ensure that the Secretary of Interior is provided with the authority, and funding, implement a policy to restructure the delinquent farm loans of eligible tribal farmers and ranchers.

(4) Direct federal technical, and managerial, assistance to new Indian farmers and ranchers is necessary to provide for the long term stabilization of Indian agriculture.

Section 3. Definitions (Reserved)

TITLE I

TRANSFER OF THE DELINQUENT FARM LOANS OF INDIAN DEBTORS TO THE SECRETARY OF INTERIOR

Section 101. The delinquent Indian farm loans issued by the Farmers Home Administration, including any mortgages of lands given as security for those loans, are hereby transferred from Secretary of Agriculture, subject to the affirmative election of the Indian debtor as provided below, to the Secretary of the Interior to be administered pursuant to the provisions of this act.

Section 102. The Secretary of Agriculture shall notify, within sixty (60) days of the date of this act, each delinquent Indian debtor of his intent to transfer their delinquent loans, and any mortgages of land given as security, to the Secretary of Interior and shall inform each debtor that he has the right, within thirty (30) days of the receipt of the notice, to reject such a transfer and to have his debt remain with the Secretary of Agriculture.

Section 103. The Secretary shall have the following responsibilies with respect to the delinquent Indian farm loans transferred to his jurisdiction:

(a) The Secretary shall, within one hundred and eighty (180) days of the transfer of the delinquent loans, implement a policy directed to restructuring the delinquent loans, consistent with the standards hereunder, of Indian borrowers of farm loans administered by either the Farmers Home Administration or the Bureau of Indian Affairs.

(b) Such loan restructuring policy shall provide for the reduction of the accumulated principal and interest to the productive, or capitalized value of the land and land related assets given as security in cases where;

(1) The Indian borrower can present a plan based on reasonable assumptions that indicate a probability that the borrower may regain financial viability as a result of the restructure; and

(2) The loan will be restructured in such a way as to minimize any loss to the federal government.

(3) Ensure, through cooperation with the Secretary of Agriculture, that eligible Indian' borrowers have operating funds, and living expenses available to them.

Section 104. *The Secretary shall make available technical assistance to the Indian borrowers who wish to have their loans considered for restructuring purpose; such technical assistance shall include, but not be limited to, assistance in preparing a viable plan for debt restructuring.*

Section 105. *Each loan so restructured by the Secretary shall be considered a new loan and the borrower will be restored to eligibility for loans, including operating loans, administered by the Farmers Home Administration or the Bureau of Indian Affairs.*

Section 106. *This Secretary shall establish an appeal procedure whereby a borrower whose loan has been determined to be not eligible for restructuring may receive reconsideration by an independent hearing examiner. If the hearing examiner rules that the loan is eligible for restructuring the Secretary shall proceed to restructure the loan consistent with the opinion of the hearing examiner.*

Section 107. *Any notice of ineligibility for restructuring shall be sent to the borrower by registered mail or certified mail within fifteen days of such determination. Such a notice shall include a written finding of ineligibility including the basis for that determination.*

Section 108.

(a) The Secretary of Interior shall administer any foreclosed, or otherwise acquired, land of former Indian owners hereunder on constructive trust for the benefit of the Indian tribes in whose reservation those lands are located, subject to the redemption rights of the following Indian persons. The following Indian persons shall have the right to redeem the land, within one year from the date of foreclosure or acquisition by the Secretary, by payment of the capitalized value of those lands: (1) first priority shall be given to the former Indian owner; and (2) second priority shall be given to the tribally enrolled family members of the former Indian owner.

(b) The Secretary shall be responsible for the leasing of these lands and shall credit the revenues so received to the reduction of the attached federal lien in the amount of the accumulated debt owed to the federal government. Further, the affected Indian tribe shall have the option, when the above specified redemption right in subsection (a) expire, to purchase those lands by the payment of the capitalized value of the lands, or the remaining lien hold value, which ever is less. In any event, after the federal lien on these lands are discharged, beneficial title shall be rested in the affected tribe and the lands shall be held in trust by the United States on behalf of that tribe.

TITLE II

ESTABLISHMENT OF A LOAN RESTRUCTURING FUND

Section 201. *Notwithstanding any other provision of law, there is authorized to be appropriated $10,000,000 to establish an Indian Direct Loan Restructuring Fund to be administered by the Secretary of Interior and that shall be utilized to refinance, including the re-amortization or rescheduling of debt, the debts of eligible Indian debtors whose loans have been restructured according to the provisions of Sections 103 through 106, as authorized herein.*

Section 202. *Indian debtors whose loans have been restructured under this authority shall remain eligible for new farm loans, including operating loans, under the farm programs administered by the Farmers Home Administration and Bureau of Indian Affairs.*

TITLE III

ESTABLISHMENT OF A NEW INDIAN FARMER AND RANCHER PROGRAM

Section 301. Notwithstanding any other provision of law, there is hereby authorized to be appropriated each year for three years the sum of $5,000,000 to establish a New Indian Farmer and Rancher Program, that will provide direct managerial training and assistance to selected eligible participants. The Secretary is authorized to provide low interest farm loans and grants, not to exceed $200,000, to new Indian farmers and ranchers who have not previously received farm loans or grants administered by the Farmers Home Administration or the Bureau of Indian Affairs.

Section 302. The Secretary shall develop agriculture training programs, that emphasize direct farm managerial assistance, appropriate to the needs of Indian agriculture on a regional basis. The Secretary shall further, by regulation, adopt and make available such programs within one year from the date of this act.

Section 303. The participating tribal farmers and ranchers will be required to attend, and complete, an appropriate established program in order to remain eligible for any loan or grant assistance hereunder. A participating tribal farmer and rancher shall be eligible for a living stipend, not to exceed $300 a month, while they attend such training up to a maximum of 24 months. Such training and education programs, as are needed to qualify the participants, may be provided by a recognized tribal community college under a contract with the Secretary.

Section 304. Tribal farmers and ranchers who have been in an agricultural enterprise for less than fifteen years shall also be eligible for the program specified in Sections 301 to 303. However, the Secretary shall first determine that the needs of the new farmer and rancher are adequately being met before allowing such participation. Additionally, any loan delinquency that these farmers have with any federally administered farm loan program must have been cured before their participation in the program is allowed.

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

SEP 25 1987

Honorable Kent Conrad
United States Senate
Washington, D.C. 20510

Dear Senator Conrad:

Although I was unable to attend the September 1 hearing of the Senate Agriculture, Nutrition, and Forestry Committee in New Town, N.D., I would like to have entered into the hearing record a few comments that I hope will be of use to you and your colleagues as you explore the issue of agriculture on Indian lands.

According to press accounts of the hearing, one of the witnesses chose to place blame on me personally for the loss of an Indian agricultural land base. One of the witnesses went further to say that the Bureau of Indian Affairs (BIA) provides no assistance to agriculture. The following facts set the record straight on the Administration's commitment to Indian agriculture:

- Local BIA offices are required to counsel with Indians who wish to use their trust land as collateral. Those who borrow money are well aware of the risks.
- The BIA has consistently requested an increase in funding for agriculture. Tribal governments, however, consistently have prioritized other areas of funding ahead of agriculture and, therefore, receive less for this important area of economic development.
- The BIA has formed a Joint BIA-Tribal Working Group on Indian Agriculture which has explored ways to improve agricultural services. One of the witnesses at your hearing, a tribal Chairman, plays an active role on the working group.
- The BIA has held 14 hearings across the country to get input from local farmers and ranchers on how the Bureau can improve its services and reflect the goals and objectives of tribal government.
- The BIA provided loan guarantees totaling $8 million - $3 million to the Billings Area and $5 million to the Aberdeen Area. These guarantees were restricted to agricultural endeavors, primarily ranching. Our grant program also enabled agricultural financing in these areas totaling at least $2.5 million. These financing levels account for 20 percent of our total FY 1987 guaranty program and 15 percent of our total FY 1987 grant program in only two of the areas.

Obviously, the BIA is taking great strides to improve agriculture on Indian lands. More needs to be done and the work your committee is doing will play a significant role in those improvements. Thank you for the opportunity to comment.

Sincerely,

Ross O Swimmer

Assistant Secretary - Indian Affairs